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**MINUTES  
REGULAR MEETING OF THE BOARD OF EDUCATION  
RIALTO UNIFIED SCHOOL DISTRICT  
DR. JOHN R. KAZALUNAS EDUCATION CENTER  
182 EAST WALNUT AVENUE, RIALTO, CA 92376**

**November 14, 2012**

**A. CALL TO ORDER AND ROLL CALL**

The regular meeting of the Board of Education of the Rialto Unified School District was called to order at 6:00 p.m. by President Gilbert at the Dr. John R. Kazalunas Education Center, 182 East Walnut Avenue, Rialto, CA 92376.

Members present: Joanne T. Gilbert, President; Joseph Ayala, Vice President, Joseph W. Martinez, Clerk; Edgar Montes, Member; Michael G. Ridgway, Member; and Siecuna Yeboah, Student Board Member.

Administrators present: Harold L. Cebrun, Sr., Ph.D., Superintendent; James S. Wallace, Ph.D., Deputy Superintendent/Chief of Staff; Felix J. Avila, Associate Superintendent (Personnel Services), Susan Levine, Ed.D., Associate Superintendent (Educational Services), and Mohammad Z. Islam, Associate Superintendent (Business Services). Also present was Rosie Williams, Executive Secretary to the Superintendent.

**PUBLIC HEARING**

1. Comments on Closed Session Agenda Items. Any person wishing to speak to any item **on** the Closed Session Agenda will be granted three minutes to make a presentation.

There were no comments.

**CLOSED SESSION**

Upon a motion by Member Montes seconded by Member Ridgway, and passed by a vote of 5-0, the Board entered into Closed Session at 6:02 p.m. to consider and discuss the following items:

1. Appeal: Student Case No.12-13-23
2. Public Employee Discipline/Dismissal/Release/Reassignment of Employees pursuant to Government Code Section 54957

(Ref. E 2.1)

3. Student Expulsions/Reinstatements/Expulsion Enrollments

**ADJOURNMENT OF CLOSED SESSION**

Upon a motion by Member Montes, seconded by Member Ridgway, and passed by a vote of 5-0, Closed Session adjourned at 7:16 p.m.

**PUBLIC MEETING RECONVENED – 7:23 P.M.**

Members present: Joanne T. Gilbert, President; Joseph Ayala, Vice President, Joseph W. Martinez, Clerk; Edgar Montes, Member; Michael G. Ridgway, Member, and Siecuna Yeboah, Student Board Member.

Administrators present: Harold L. Cebrun, Sr., Ph.D., Superintendent; James S. Wallace, Ph.D., Deputy Superintendent/Chief of Staff; Felix J. Avila, Associate Superintendent (Personnel Services), Susan Levine, Ed.D., Associate Superintendent (Educational Services), and Mohammad Z. Islam, Associate Superintendent (Business Services). Also present was Rosie Williams, Executive Secretary to the Superintendent, and Rose Lopez, Interpreter.

**PLEDGE OF ALLEGIANCE**

Siecuna Yeboah, Student Board Member, led the Pledge of Allegiance.

**REPORT OUT OF CLOSED SESSION**

Superintendent Cebrun reported that in closed session the Board of Education took action as follows:

- Student case #12-31-23 – student was expelled for the current semester and the next semester. This case will be reviewed at the December 12, 2012, Board Meeting.
- Approved the request for an extension of a leave of absence for classified employee #1561912, Secretary III, until May 31, 2013.
- Approve the request for an extension of a leave of absence for classified employee #1600422, Secretary II, until May 31, 2013.

**ADOPTION OF AGENDA**

Upon a motion by Clerk Martinez, and seconded by Member Montes, Item 1 was approved, as amended, by a unanimous 5-0 vote by the Board of Education.

1. Adoption of Agenda, as amended.  
Amended as follows:

(Ref. E 2.2)

- Section **D. PUBLIC INFORMATION AND CORRESPONDENCE #4** was added: 4. A Special Meeting of the Board of Education is scheduled for Friday, December 7, 2012, at 6:00 p.m., at the Dr. John R. Kazalunas Education Center, 182 East Walnut Avenue, Rialto, CA 92376. This meeting will be held for the Reorganization of the Board of Education and to administer the Oath of Office to new Board Member Nancy G. O'Kelley, and returning Board Members Joseph Ayala and Joseph W. Martinez.
- Page (Ref. K 2.1) the employment step for Ronnie Gonzalez was corrected to read 29-3.
- Page (Ref. K 2.2) the employees listed under **PLACE ON THE 39-MONTH REEMPLOYMENT LIST** (Julia Lopez, Secretary III, Carter High School, and Elizabeth Shantz, Secretary II, Purchasing Services) were pulled from the Agenda.

#### **B. PUBLIC HEARING**

1. Comments from the Floor: At this time, any person wishing to speak to any item not on the Agenda will be granted three minutes to make a presentation.

Gil Navarro, Student Advocate, shared his concerns regarding the Upward Bound Program.

Lilia Merino, student, shared her concerns regarding the Upward Bound Program.

2. Comments on Agenda Items: Any person wishing to speak to any item on the Agenda will be granted three minutes to make a presentation.

Edward Chesonis and Cheryl Decker spoke regarding their opposition to Charter Schools.

#### **C. PRESENTATIONS**

1. Presentation honoring Secondary Schools' 2012 STAR Testing 600 Club

Dr. Susan Levine and John Roach presented a Certificate of Recognition to all the secondary students, who earned a perfect score on the 2012 STAR Test.

(Ref. E 2.3)



2. DSAC Presentations, High School

The following DSAC students shared activities held at their schools:

Yukie Bojorquez, Eisenhower High School  
Shakeema Gray, Milor High School  
Anna Razo and Kiyondre Sutton, Carter High School  
Mark Bibian, Rialto High School

3. Presentation honoring the winners of the Red Ribbon Week School Decoration Contest: Curtis and Garcia Elementary Schools, Jehue Middle School, and Carter High School, with honorable mentions awarded to Kelley and Hughbanks Elementary Schools.

President Gilbert presented trophies to Curtis and Garcia Elementary Schools, Jehue Middle School, and Carter High School as winners of the Red Ribbon Week School Decoration Contest. Certificates of Recognition were presented to Kelley and Hughbanks Elementary Schools honoring them with honorable mentions.

4. Superintendent's Report

Superintendent Cebrun thanked everyone for their support on Proposition 30. He congratulated newly elected Board Member Nancy O'Kelley, and returning Board Members Joseph Ayala and Joseph Martinez. He shared information regarding athletics.

Superintendent Cebrun announced that any Board Member, Administrator, and/or Secretary who request business cards in English and one alternative language, including Spanish, may submit their request in writing to the Board President and Superintendent, and their request will be processed immediately.

Mohammad Islam, Associate Superintendent, Business Services, announced that the Rialto Unified School District received a \$2.8 million grant from the South Coast Air Quality Management District. He gave credit to David Walthall, Interim Transportation Supervisor, for securing the grant. He shared that with this grant, we should be able to replace 16 of our pre-1994 school buses. He stated that he is looking at every contact to ensure that the contract is in the best interest of the Rialto Unified School District. He will give his recommendation to Superintendent Cebrun, who will then ask for the Board's approved to terminate and/or change contracts that do not meet the best interest of our District.

(Ref. E 2.4)

Dr. Susan Levine, Associate Superintendent, Educational Services, stated that the Educational Services Department have been training with the Information Services Department on the new student information system, which will be implemented in full by the next school year. She stated we will be piloting a new learning management system named My Big Campus, which is a free product that will be replacing the eChalk system we are currently using. She thanked the Educational Services Department for the hard work they put in on the last two workshops presented to the Board. She announced and congratulated Jennette Harper, Senior Director-QEIA/GATE, who will be receiving the Distinguished Service Award from the California Association for the Gifted.

**D. PUBLIC INFORMATION AND CORRESPONDENCE**

1. Williams Inspection Reports – 2011-2012
2. Thanksgiving Recess will begin Monday, November 19 through Friday, November 23, 2012 – no school for students.
3. Reminder: The next regular meeting of the Board of Education is scheduled for Wednesday, December 12, 2012, at 7:00 p.m., at the Dr. John R. Kazalunas Education Center, 182 East Walnut Avenue, Rialto, CA 92376.

**ADDED ITEM**

4. A Special Meeting of the Board of Education is scheduled for Friday, December 7, 2012, at 6:00 p.m., at the Dr. John R. Kazalunas Education Center, 182 East Walnut Avenue, Rialto, CA 92376. This meeting will be held for the Reorganization of the Board of Education and to administer the Oath of Office to new Board Member Nancy O'Kelley, and returning Board Members Joseph Ayala and Joseph W. Martinez.

**CONSENT CALENDAR ACTION SECTION:**

Upon a motion by Clerk Martinez, and seconded by Member Ridgway, Items E - I were approved by the Student Board Members preferential vote, and a unanimous 5-0 vote by the Board of Education.

**E. MINUTES**

1. Approve the minutes of the Special Board Workshop held Wednesday, October 24, 2012.

(Ref. E 2.5)

2. Approve the minutes of the Regular Board Meeting held Wednesday, October 24, 2012.

**F. GENERAL FUNCTIONS CONSENT ITEMS- None**

**G. INSTRUCTION CONSENT ITEMS**

1. Approve mileage reimbursement for parents, Jorge and Alejandra Rivera, for transportation for their son to and from Kucera Middle School, effective October 15, 2012 to June 30, 2013, at a cost to the District not to exceed a total of \$5,000.00, to be charged to the Special Education Transportation account.
2. Approve the attendance of sixteen (16) student athletes and four (4) coaches from Rialto High School to attend the 9th Annual Vegas Invitational, at Mountain View Christian High School, in Las Vegas, Nevada, on December 19-22, 2012, to be paid by site athletic funds.
3. Ratify the approval of the recommendation made by the Senior Director, Student Services, to grant an exemption from all physical activities for Student No. 090786, per Board Policy 6142.7, for first and second semester of the 2012-2013 school year, effective October 15, 2012.
4. Approve the grant from the Western Association for College Admission Counseling (WACAC) for support services and information to the high school counselors in the Rialto Unified School District through October 31, 2013, at no cost to the District.

**H. BUSINESS AND FINANCIAL CONSENT ITEMS**

1. Approve Warrant Listing Register for Funds (Sent under separate cover to Board Members; copies for public review will be available at the Board Meeting.):

General Fund	#01	\$3,447,157.16
Child Development Fund	#12	5,237.22
General Obligation Bond Fund	#21	80,443.80
State School Building Fund	#35	31,097.24
Special Reserve Fund	#40	4,550.00
<b>FUND SUB TOTAL</b>		<b>3,568,485.42</b>
Nutrition Services Fund	#13	104,181.27
	<b>Grand Total</b>	<b>\$3,672,666.69</b>

(Ref. E 2.6)



2. Approve Purchase Order Listings. (Sent under separate cover to Board Members; copies for public review will be available at the Board Meeting.)
3. Approve the listed contracts and agreements for consultant services.
4. Accept the listed donations from Target, Edward J. Carrillo, State Farm Agent, AT&T United Way, Rocket Learning, and Coca Cola Refreshments.

**I. FACILITIES PLANNING ITEMS – None**

**J. DISCUSSION/ACTION ITEMS**

Upon a motion by Clerk Martinez and seconded by Member Ridgway, Items J 1 – 4 and J 6 - L were approved by a unanimous 5-0 vote by the Board of Education. Item J 5 was approved by a 4-1 vote by the Board of Education, with Member Montes abstaining.

1. Terminate the agreement with Program Management Integration, LLC (PMI) for Bond Measure Program Implementation and Support Services effective November 30, 2012. In the event the District is in need of services provided by Program Management Integration, LLC (PMI) in the future, a new agreement will be negotiated for Board of Education consideration and approval.
2. Approve the following revisions to signature authorizations: Mohammad Z. Islam, Associate Superintendent-Business Services - revised to include "Purchase Orders with no monetary limit;" James S. Wallace, Ph.D., Deputy Superintendent/Chief of Staff, Felix Avila, Associate Superintendent-Personnel Services, Susan Levine, Ed.D., Associate Superintendent-Educational Services, and Sharon Flores, Senior Director-Fiscal Services – revised to exclude "Contracts and Purchase Orders;" and George Chidiac, Purchasing Agent, revised to exclude "Contracts," effective November 15, 2012, until revoked.
3. Approve an agreement with Practi-Cal for Medi-Cal Local Education Agency (LEA) Billing Option Services, effective November 15, 2012 through November 14, 2013, with up to two one-year renewal options at the election of the District. All costs associated with this service will be paid with Local Education Agency (LEA) funds.

4. Approve an agreement with MCF Consulting, Incorporated for Medical Administrative Billing (MAA) services, effective November 15, 2012 through November 14, 2013, with up to two one-year renewal options at the election of the District. All costs associated with this service will be paid from the District General Fund.
5. Approve/Approve with Conditions/Deny S.C.A.L.E. Leadership Academy Charter School Petition and, if Petition is denied, adopt Board Resolution No. 12-13-31 denying S.C.A.L.E. Leadership Academy Charter School Petition.
6. Approve the 2012-2013 San Bernardino County Superintendent of Schools (SBCSS) final report and Facility Inspection Tool (FIT) for the Decile 1-3 and/or QEIA schools which include Bemis, Boyd, Casey, Curtis, Dunn, Henry, Kelley, Morgan, Morris, and Preston Elementary Schools; Frisbie, Kolb, and Rialto Middle Schools; and Carter and Rialto High Schools.
7. Adopt Resolution No. 12-13-29 authorizing entering into an amended 2012-2013 contract number CSPP-2420 and Project Number 36-6785-00-2, Amendment Number 2, in place of original contract CSPP-2420, Project Number 36-6785-00-2, Amendment Number 1.
8. Approve the ratification of The Knight Book Scholarship awarding four 2011/2012 students (a freshman, sophomore, junior, and senior) from Rialto High School \$500.00 each for college expenses and to be redeemed upon enrollment of a community college or acceptance to a four-year university, to be paid out of site Step Up funds and to be transferred to Educational Services Student Incentives for distribution to the recipients upon meeting the required college/university enrollment requirements.
9. Approve a Quality Education Investment Act (QEIA) waiver for the requirement of exceeding the Academic Performance Index (API) for Rialto High School in the 2011-2012 school year.

**K. EMPLOYEES: PERSONNEL REPORT NO. 1080**

- 1-3. Approve Personnel Report No. 1080 for classified and certificated employees.
4. Adopt Resolution No. 12-13-30, Waiver of Speech-Language Pathology Services & CBEST Credential.

(Ref. E 2.8)



**L. PUPIL PERSONNEL**

Approve the recommendations by the Administrative Hearing Panel (AHP):

**ADMINISTRATIVE HEARING:**

**Student Number:**  
55605

**STIPULATED EXPULSION:**

**Student Number:**  
96431

**APPEAL:**

**Student Number:**  
55605

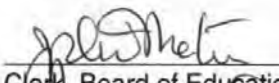
**M. COMMENTS FROM MEMBERS OF THE BOARD OF EDUCATION**


**Board Bylaw 9323**

The Board president may grant each Board member three minutes for the purpose of making an individual Board report or statements consistent with the Ralph M. Brown Act and Board Bylaws.

**N. ADJOURNMENT**

Upon a motion by Student Board Member Yeboah, seconded by Clerk Martinez, and approved by the Student Board Members preferential vote, and a unanimous 5-0 vote by the Board of Education, the meeting was adjourned at 8:50 p.m.

  
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Clerk, Board of Education

  
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Secretary, Board of Education

**RESOLUTION NO. 12-13-31  
RESOLUTION OF THE BOARD OF EDUCATION  
RIALTO UNIFIED SCHOOL DISTRICT  
SAN BERNARDINO COUNTY, CALIFORNIA  
DENYING CHARTER SCHOOL PETITION FOR  
S.C.A.L.E. LEADERSHIP ACADEMY**

November 14, 2012

**WHEREAS**, pursuant to Education Code section 47605, et seq., the Board of Education of the Rialto Unified School District ("Board" or "District") is required to review and authorize creation and/or renewal of charter schools; and

**WHEREAS**, Petitioners for the S.C.A.L.E. Leadership Academy ("SCALE" or "School") submitted to the District a Charter School Petition ("Petition"), on or about August 13, 2010; and

**WHEREAS**, on September 22, 2010, a public hearing on the provisions of the Petition was conducted in accordance with the provisions of Education Code section 47605, at which time the District Board considered the level of public support for this Petition by teachers employed by the District, other employees of the District and parents. At that public hearing, Mr. Lawrence Wynder, lead petitioner, spoke in support of the Petition. Several other individuals were in attendance at the hearing in support of the Petition; and

**WHEREAS**, the Petition was denied on October 13, 2010, by the District Board as set forth in the resolution adopted by the Governing Board; and

**WHEREAS**, on November 12, 2010, the Petitioners submitted a revised Petition to the District; and

**WHEREAS**, the District staff met with Mr. Wynder on December 10, 2010, for purposes of reviewing the Petition and requesting clarifying information from Mr. Wynder regarding the changes made to the Petition; and

**WHEREAS**, on December 14, 2010, a public hearing on the provisions of the Petition was conducted in accordance with the provisions of Education Code section 47605, at which time the District Board considered the level of public support for this Petition by teachers employed by the District, other employees of the District and parents. At that public hearing, Mr. Lawrence Wynder, lead petitioner, made a presentation to the Board and spoke in support of the Petition; and

**WHEREAS**, the Petition was denied on January 12, 2011, by the District Board as set forth in the resolution adopted by the Governing Board; and

(Ref. J 5.1)

**WHEREAS**, on March 18, 2011, the Petitioners again submitted a revised Petition to the District; and

**WHEREAS**, the District staff met with Mr. Wynder on March 29, 2011, for purposes of reviewing the Petition and requesting clarifying information from Mr. Wynder regarding the changes made to the Petition; and

**WHEREAS**, on April 13, 2011, a public hearing on the provisions of the Petition was conducted in accordance with the provisions of Education Code section 47605, at which time the District Board considered the level of public support for this Petition by teachers employed by the District, other employees of the District and parents. At that public hearing, Mr. Lawrence Wynder, lead Petitioner, made a presentation to the Board and spoke in support of the Petition. No other persons spoke on behalf of or against the Petition; and

**WHEREAS**, the Petition was denied on May 11, 2012, by the District Board as set forth in the resolution adopted by the Governing Board; and

**WHEREAS**, Mr. Wynder appealed the District's denial of the Petition to the San Bernardino County Office of Education ("SBCOE"). The SBCOE, in reviewing Mr. Wynder's Petition, determined there were numerous deficiencies with the Petition, particularly with respect to the fiscal program proffered in the Petition; and

**WHEREAS**, the SBCOE denied the appeal on December 5, 2011, finding that the Petition presented an unsound educational program; the Petitioners were demonstrably unlikely to successfully implement the program and the Petition did not contain reasonably comprehensive descriptions of all the required elements; and

**WHEREAS**, Mr. Wynder appealed SBCOE's denial of his appeal to the State Board of Education ("SBE"). In reviewing his appeal, the California Department of Education ("CDE") staff determined, amongst other findings, that the Petitioners were not likely to successfully implement the program and recommended to the Advisory Commission on Charter Schools ("ACCS") that the appeal be denied; and

**WHEREAS**, on June 14, 2012, after considering information from the District, CDE staff and Petitioners, the ACCS recommended to the SBE that Petitioners appeal of the District and County's decision of denial of his Petition be denied; and

**WHEREAS**, Mr. Wynder withdrew his appeal before the SBE could take action on the matter; and

**WHEREAS**, on September 26, 2012, Mr. Wynder resubmitted yet another revised charter Petition to the District; and

**WHEREAS**, on October 24, 2012, a public hearing on the provisions of the Petition was conducted in accordance with the provisions of Education Code section 47605, at which



time the District Board considered the level of public support for this Petition by teachers employed by the District, other employees of the District and parents. At that public hearing, Mr. Lawrence Wynder, made a presentation to the Board. During his presentation, Mr. Wynder indicated he had revised certain sections of the Petition, such as provision of educational services to English Language Learners, based on input and advice given to him by CDE and ACCS commission members. At that time he indicated he had revised three substantive areas of the Petition based on direction provided by CDE and ACCS. Also, several other persons spoke on behalf of the Petition; and

**WHEREAS**, the District staff met with Mr. Wynder on October 25, 2012, for purposes of reviewing the Petition and requesting clarifying information from Mr. Wynder regarding the changes made to the Petition; and

**WHEREAS**, in reviewing each of the four Petitions, the Board has been cognizant of the intent of the Legislature that charter schools are and should become an integral part of the California educational system and that establishment of charter schools should be encouraged; and

**WHEREAS**, in reviewing each of the Petitions, the District staff from the areas of Pupil Personnel Services, Curriculum & Instruction, Human Resources, and Business, working collaboratively with the Superintendent, Dr. Harold Cebrun, and with District legal counsel, have reviewed and analyzed all of the information with respect to the Petition, including information related to the operation and potential effects of the proposed charter school and made a recommendation to the District Board that the Petition be denied based on that review; and

**WHEREAS**, the District has invested significant time and resources in considering four slightly different versions of the Petition, only to have the Petitioners resubmit after making changes primarily to the concerns noted in the resolutions adopted by the District and in this instance recommendations made by CDE staff; and

**WHEREAS**, it has been explained to the Petitioners the District's resources are not best expended assisting charter petitioners in the development of charters, but instead, it is the responsibility of charter petitioners to develop, through their own expertise, consultants, and resources, a full, complete, and educationally sound charter for consideration by the District prior to submitting a petition to the District; and

**WHEREAS**, the Petitioners have submitted essentially the same proposal four times, which proposal is not educationally sound and is demonstrably unlikely to be successfully implemented. Moreover, the Petitioners have been unable, even after repeatedly receiving information regarding the concerns of the District, County, CDE staff and ACCS committee members, to substantially to remedy the deficiencies in their Petition; and

**WHEREAS**, the District has determined that it is appropriate to make a record of the District's numerous concerns regarding the Petition and the factual findings supporting denial of the Petition which the District analyzed; and

**WHEREAS**, the District Board of Education has fully considered SCALE's Petition and District staff's recommendation.

**NOW, THEREFORE, BE IT RESOLVED AND ORDERED** that the District Board of Education finds the above recitals to be true and correct and incorporates them herein by this reference.

**BE IT FURTHER RESOLVED AND ORDERED** that the District Board of Education, having fully considered and evaluated the Petition for SCALE, hereby denies the Petition pursuant to Education Code section 47605 as not consistent with sound educational practice based upon the following findings:

- A. The Petition presents an unsound educational program for the pupils to be enrolled in the Charter School. [Education Code section 47605(b)(1)];
- B. The Petitioners are demonstrably unlikely to successfully implement the program. [Education Code section 47605(b)(2)];
- C. The Petition does not contain the number of signatures required by Education Code section 47605(a). [Education Code section 47605(b)(3)].

**BE IT FURTHER RESOLVED AND ORDERED** that the District Board of Education hereby determines the foregoing findings are supported by the following specific facts:

**I. THE PETITION PRESENTS AN UNSOUND EDUCATIONAL PROGRAM FOR THE PUPILS TO BE ENROLLED IN THE CHARTER SCHOOL [Education Code section 47605(b)(1)]**

**A. The Plan for English Language Learners ("ELL") is Inadequate and Incomplete and Raises Numerous Concerns.**

As has been noted in the prior resolutions adopted by this Board, the Petitioners are targeting District attendance areas in which there are high numbers of identified English Learners ("ELs") at the elementary and middle schools. Thus, it is imperative their program for identified English Learners is well-developed and specifically address the needs of English Learners. The District finds that the Petition fails to provide a reasonably comprehensive educational program for ELL students for the following reasons:

At the public hearing, Mr. Wynder indicated he revised the most recently submitted Petition in order to address the concerns previously raised by the District, SBCOE and CDE. Unfortunately, despite having had four opportunities and input/guidance from five different agencies to address these concerns, significant concerns still remain as noted below:

(Ref. J 5.4)



The English Learner section of the Petition is set forth on pages 51 through 59. In reviewing these pages, District staff noted numerous inconsistencies, a complete lack of understanding of current research findings regarding effective instruction for English Learners, and a description of an educational program that the District staff does not believe is sound for an English Learner at any level of language proficiency. Specifically, the Petition does not fully address instruction in English language proficiency, both conversational and academic, nor does it fully address an instructional program that meets English Learners' needs in the academic content areas.

Moreover, the District staff found the Petition lacking in the following areas:

- English Language Development: page 51 the Petition states that "SCALE follows a conceptual model that holds the assumption that fluency of (sic) a second language is developed more quickly when (missing word) (sic) are fully immersed in the language" in classrooms with students who are proficient in English. This belief is contrary to the current research base which holds that all English Learners at the beginning and early intermediate levels of language proficiency should be placed in "structured" or "sheltered" English immersion classrooms, where the focus of instruction is the development of English language proficiency in all four domains of language. Once students have acquired sufficient language proficiency to understand unmodified content instruction in English Mainstream classes, they can be placed in those classes.
- There is no provision in the Petition for explicit English Language Development (ELD) instruction for students at any level of language proficiency. Current practice throughout California (and throughout most of the United States) is to provide a daily period of explicit English Language Development instruction that targets instruction of the ELD standards at each student's individual level of language proficiency. This instruction is provided to English Learners only, rather than in a mixed setting with English-only students.
- The Petition does not address the development of academic language proficiency, which is a focus area of current research-based English Learner instruction, and should be included in ELD instruction beginning at the Intermediate level of language proficiency.
- English Learner placement: Although the Petition clearly states that English Learners will be classified as Beginning, Early Intermediate, Intermediate, Early Advanced and Advanced, there is no evidence of a clear plan to differentiate instruction for each specific level of language proficiency. The Petition continually states, as it does on page 55, that "English Learners will be enrolled in mainstream classes with the general population so that they are fully immersed in the English Language."

(Ref. J 5.5)



- Instructional Strategies: The Petition does not clearly delineate what is language proficiency instruction and what is content instruction. Current research finds that English Learners need well defined instructional programs in both areas. Although the Petition lists numerous strategies and protocols (without differentiating between them) such as SIOP (Sheltered Instruction Observation Protocol), SDAIE, and GLAD, the Petition fails to address how teachers will use those strategies to scaffold content instruction for English Learners.
- Although language proficiency assessment which is appropriate for English Learners (ADEPT, SOLOM and CELDT) is included in the Petition, there is not a clear plan for how results of those assessment will be used to design and deliver instruction for English Learners.
- In the area of Interventions, the Petition states that "students who are struggling due to language proficiency will be participating in intervention activities that are specifically focused on decoding and comprehension." Although the Petition acknowledges that a student's level of language proficiency could be a cause for needing intervention, the Petition does not demonstrate what those interventions might include or how they would be differentiated, based on a student's level of language proficiency.
- Professional development and ongoing support for teachers of English Learners is not well-defined, nor is it differentiated from the Professional Development provided to teachers of English-only students.
- Monitoring and Re-Designation (sic) of EL Students – the Petition does not include a well-defined reclassification criteria although it does include general elements of what reclassification criteria should include.
- The Petition does not acknowledge awareness of the widely held, research-based understanding that English Learners often require 5-7 years to acquire a level of language proficiency advanced enough for the student to fully comprehend unmodified (mainstream) instruction. (Collier, 1987, Hakuta, 2000, August and Shanahan, 2006). It is highly likely that many of the students who could enroll at SCALE would be EL students at beginning to intermediate levels of language proficiency for whom there would not be a well-defined program of instruction.

**B. District Staff Also Noted the Following Concerns with Other Aspects of the Educational Program Described in the Petition.**

***Understanding of the students the school plans to educate:***

Pg. 8 Statement of need is based on 2008-2010 test data, which at this point is two years old.

(Ref. J 5.6)

***Teaching methodologies:***

Pg. 18 and pg. 28 Only one teaching methodology is named or identified. GEL – District staff does not believe a school can be built on a single strategy.

***Scope of sequence of skills to be taught:***

Pg. 24 Goals/objectives set forth in each core area are weak. Instead of making actual commitments, the Petition uses verbs such as “expose,” “develop” and lacks precise curricular goals/objectives.

***Scholarly research:***

Pg. 33 Advisory curriculum is not specified.

Pg. 69/70 Program and Implementation Plan. District staff believes the contents is a “list of stuff” copied from a methods book. There is no evidence of how these “initiative methods” align with each other. Also, the timeline, week to be implemented has no rhyme or reason. It is entirely unclear why counseling services or interventions are described as “initiative methods.”

Pg. 21/22 Description of “Professional Development” is vague. Specific PD goals and activities are lacking. It is unknown what training teachers and support staff will be participating in.

Pg. 23 No provisions for GATE students are evidenced.

Pg. 33 Although it is stated that IP will raise the academic achievement of at risk students, no explanation of how this will be accomplished is provided.

**II. THE PETITIONERS ARE DEMONSTRABLY UNLIKELY TO SUCCESSFULLY IMPLEMENT THE PROGRAM SET FORTH IN THE PETITION. [Education Code section 47605(b)(2)]**

Based on the information available to the District, the budget documents submitted by SCALE appear to present an unworkable and/or inaccurate budget, for example:

**Five Year Charter School Financial Plan**

**1. Table 1- Five Year Operating Budget**

- \$250,000 Cash Flow & Revolving Loan is included as part of the revenue in 2012-13, which is the incorrect recognition for the loan. There is no indication of when the loan would be repaid. Loan is also included as part of the fund balance which gives the appearance that the School will have the reserves to repay the loan.

(Ref. J 5.7)

2. Table 11- Student Data.

- Growth of 125 students per year is an assumption that contradicts the overall enrollment trend in RUSD. Each year the charters enrollment will grow at a rate of 125 students and retain all prior year students.
- Assumes a 95% attendance ratio which appears aggressive considering the school district achieves these rates through the regular school day and the attendance recovery via Step Up.

3. Table 111- Staffing and Personnel Data

- Total teacher cost per year assumes all teachers get paid at the same rate. For example, in year three the School has 18 teachers at Step 3 \$48,128 for a total cost of \$866,304.
- Assumptions used for Health & Welfare (H&W) package are not reasonable. The cost of H&W is estimated to be \$500/month; this would not provide a comparable plan to that offered by the District. The current cost incurred by the District is more than double the amount presented by the School.

4. Table IV- Revenues

- General Purpose Block Grant for all grades includes COLA, the School Service of California advisory committee has advised CA charter schools not to include a COLA given that it most like will not be funded. If the School includes the COLA it must have a contingency plan to address the shortfall if not funded.
- Categorical Block Grant revenue per ADA amount is higher than the \$400 published by CDE.
- Assumes EIA will have a per ADA growth over the next five years, program has incurred cuts in the current year and if projected to incur future cuts. ADA amount is recommended to be projected at \$325.

5. Table VII – Expenditures

- The per enrolled student amounts for instructional materials, staff development, and ongoing technology seems underestimated.



6. Table IX – Cash Flow

- Cash flow is presented with the assumption that the November triggers do not occur, however, the percentages used do not reflect the approved rates in EC 14041(a) if the trigger does not occur.

7. Figure 17 – School Calendar (page 41)

- Total number of days indicates "190 Instruction Days." According to the calendar provided, there are 192 days.

As a result, it is clear that the budget projections presented in the Petition are unrealistic and are unlikely to result in a successful, fiscally solvent charter school.

**III. THE PETITION DOES NOT CONTAIN THE NUMBER OF SIGNATURES REQUIRED BY EDUCATION CODE SECTION 47605(a). [Education Code section 47605(b)(3)]**

Education Code section 47605(a) requires that a charter petition be signed by either (1) "a number of parents or legal guardians of pupils that is equivalent to at least one-half of the number of pupils that the charter school estimates will enroll in the school for its first year of operation" or (2) "a number of teachers that is equivalent to at least one-half of the number of teachers that the charter school estimates will be employed at the school during its first year of operation."

The petition must "include a prominent statement that a signature on the petition means that the parent or legal guardian is meaningfully interested in having his or her child or ward attend the charter school, or in the case of a teacher's signature, means that the teacher is meaningfully interested in teaching at the charter school."

The proposed Charter is required to be attached to the Petition. In this case, the most recent Charter submitted to the District includes signatures of five teachers, as set forth at pages 220 and 221. The signature pages submitted do not meet the statutory requirements for submitting the Charter to the District as the signatures are all dated in early May 2012. At the October 24, 2012 public hearing, Mr. Wynder indicated that he made substantive revisions to several areas of the Charter after the ACCS's recommendation of denial in June 2012. He did not indicate that the revised charter had been reviewed by the five individuals whose signatures he submitted. Thus, the signatures from May 2012 do not meet the minimum requirements as they are not for the Petition that is currently being considered by this Board.

For this reason, the District does not accept the teacher signatures as meeting the minimum requirements of Education Code section 47605(a).

**BE IT FURTHER RESOLVED AND ORDERED** that the terms of this Resolution are severable. Should it be determined that one or more of the findings and/or the factual determinations supporting the findings is invalid, the remaining findings and/or factual determinations and the denial of the Petition renewal shall remain in full force and effect. In this regard, the District Board of Education specifically finds that each factual determination, in and of itself, is a sufficient basis for the finding it supports, and each such finding, in and of itself, is a sufficient basis for denial.

The foregoing resolution was considered, passed, and adopted by this Board at its regular meeting of November 14, 2012.

**DENYING THE CHARTER SCHOOL PETITION FOR SCALE LEADERSHIP  
ACADEMY**

By: \_\_\_\_\_  
President of the Board of Education of the  
Rialto Unified School District

STATE OF CALIFORNIA                     )  
  ) ss.  
COUNTY OF SAN BERNARDINO         )

I, Joseph W. Martinez, Clerk of the Board of Education of the Rialto Unified School District, do hereby certify that the foregoing Resolution was duly passed, approved and adopted by the Board of Education of the Rialto Unified School District at a regular meeting of said Board held on November 14, 2012.

\_\_\_\_\_  
Clerk of the Board of Education of the  
Rialto Unified School District,  
State of California





Gary Thomas, Superintendent  
San Bernardino County Office of Education  
601 North E Street  
San Bernardino, California 92415-0020

This letter is in response to Rialto Unified School District's (the "District") findings of fact for denial of the SCALE charter on November 14, 2012.

Education Code Section 47605(b) states:

The governing board of the school district shall grant a charter for the operation of a school under this part if it is satisfied that granting the charter is consistent with sound educational practice. The governing board of the school district shall not deny a petition for the establishment of a charter school unless it makes written factual findings, specific to the particular petition, setting forth specific facts to support one or more of the following findings:

- (1) The charter school presents an unsound educational program for the pupils to be enrolled in the charter school.
- (2) The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.
- (3) The petition does not contain the number of signatures required by subdivision (a).
- (4) The petition does not contain an affirmation of each of the conditions described in subdivision (d).
- (5) The petition does not contain reasonably comprehensive descriptions of [the 16 required elements]. (Emphasis added.)

Accordingly, the law is written such that the default position for a school district governing board is to approve a charter petition, unless it makes written factual findings to support a denial. None of the District's findings were based on fact, and therefore the findings constitute an impermissible basis for denial of the SCALE petition.

Below please find our responses (in plain text) to the District's factual findings (excerpted in italicized text in shaded boxes), in the order in which the District presented them.

*Finding 1A. First bullet. English Language Development: page 51 the Petition states that "SCALE follows a conceptual model that holds the assumption that fluency of (sic) a second language is developed more quickly when (missing word) (sic) are fully immersed in the language" in classrooms with students who are proficient in English. This belief is contrary to the current research base which holds that all English Learners at the beginning and early intermediate levels of language proficiency should be placed in*



*"structured" or "sheltered" English immersion classrooms, where the focus of instruction is the development of English language proficiency in all four domains of language. Once students have acquired sufficient language proficiency to understand unmodified content instruction in English Mainstream classes, they can be placed in those classes.*

**SCALE's Response:**

The District holds the position that SCALE presents an unsound educational program for the pupils to be enrolled in the Charter School with an emphasis on English Language Learners. The District makes the unsupported claim that the research is contrary to the language of the petition, without citing any specific source, to provide how the petition lacks soundness. SCALE asserts, based on the evidence provided in the petition, that the school presents a sound model for serving English Language Learners and all pupils that will be enrolled in the school.

The District disregards the fact that the petition states students will participate in full immersion classrooms while receiving modified instruction to support English Language Development (p. 47). SCALE expects, based on various parent inquiries, that most or all of ELLs that will attend SCALE will be at the intermediate level and will have reasonable fluency. The California Department of Education permits English Learners to participate in mainstream classes so long as students have been determined to have acquired reasonable fluency and will receive modified instruction. Thus, the SCALE petition is consistent with state standards and therefore presents a sound model for serving pupils that require English Language Development support.

Further, the petition states that SCALE will create a learning environment that immerses students in English while utilizing a number of different strategies, resources, supports, and interventions (p. 47). The petition states that classes will include the use of "ELD Standards and learning objectives in each lesson and unit" (p. 47). The petition states that classrooms will use GLAD and SDAIE techniques to modify instruction (p. 48). The petition states that all classes will use SIOP strategies (p.48). These examples provide explicit evidence for how instruction will be modified. Thus, various approaches and resources are explicitly stated in the petition and provide further support for SCALE's ability and capacity to modify and differentiate instruction for different levels of English Language Learners. SCALE is aware that the strategies stated in the petition that are designed to benefit English Learners will also benefit other learners as well.

Thus, this finding ignores the explicit language of the SCALE petition and is an impermissible basis for denial. This furthermore supports that the SCALE petition does in fact provide a sound educational program that will benefit English Learners.

*Finding 1A. Second bullet. There is no provision in the Petition for explicit English Language Development (ELD) instruction for students at any level of language proficiency. Current practice throughout California (and throughout most of the United States) is to provide a daily period of explicit English Language Development instruction that targets instruction of the ELD standards at each student's individual level of language proficiency. This instruction is provided to English Learners only, rather than*



*in a mixed setting with English-only students.*

**SCALE's Response:**

The District states the "there is no provision in the Petition for explicit English Language Development instruction for students at any level of proficiency". However, the petition clearly states that SCALE classrooms will use SIOP and will include ELD standards. This is explicitly stated in the petition (p. 48). The petition also states that "all" teachers will teach English and utilize ELD standards (p. 63). Thus, ELD will not be provided for a period of the day, but rather for the entire day. ELLs will receive modified instruction while supporting English language development throughout the school day and this is explicitly stated in the petition.

The petition articulates how English language development and ELD instruction will be taught. The petition states that teachers will use Dialogue Journals (p. 48). According to a number of studies, dialogue journal achieve significant gains in improving fluency among ELLs (e.g. Peyton, 2000; Peyton & Staton, 1993; Cloud, Genesee, & Hamayan, 2009). Dialogue Journals also support SCALE's emphasis on academic writing (i.e., SCALE's commitment to expository writing and writing assessment).

SCALE students participating in daily writing practice and Dialogue Journals are designed to support ELLs by engaging in deliberate practice that leads to the mastery of the English Language. The petition states that each classroom will have computer workstations that will be used as language centers (p. 49). The language center will include language programs such as Rosetta Stone, Accelerated Reader and a variety of interactive language programs that are designed to support English Learners with achieving fluency. (p. 49). Thus, the programs and online learning tools that SCALE provides in language centers are "student specific" and computer adaptive programs that provide individualized instruction based on the students' level of proficiency.

The District is furthermore uninformed and perplexed by SCALE's reference to academic settings. According to Gallimore and Goldberg (2001), a setting is when individuals come together to accomplish something as well as the ways of acting within a particular learning environment. The District appears to have, or conveniently adopts, a limited understanding of what a setting entails and confines "setting" to merely a physical space. This, therefore, reconciles District staff's inability to understand SCALE research based educational approach to 21<sup>st</sup> Century learning.

*Finding 1A. Third bullet. The Petition does not address the development of academic language proficiency, which is a focus area of current research-based English Learner instruction, and should be included in ELD instruction beginning at the Intermediate level of language proficiency.*

**SCALE's Response:**

This is a repeat of a previous finding of the District and does not represent a new finding. Accordingly, SCALE hereby incorporates the responses previously enumerated above.

*Finding 1A. Fourth bullet. English Learner placement: Although the Petition clearly states that English Learners will be classified as Beginning, Early Intermediate,*



*Intermediate, Early Advanced and Advanced, there is no evidence of a clear plan to differentiate instruction for each specific level of language proficiency. The Petition continually states, as it does on page 55, that "English Learners will be enrolled in mainstream classes with the general population so that they are fully immersed in the English Language."*

**SCALE's Response:**

The petition states that ELL students will be placed in leveled reading groups while using the AR program to evaluate ELLs' progress (p. 48). These are clear examples of differentiated instruction. The petition states that students will produce dialogue journals. This strategy and activity is specifically designed to support English Language Development (p. 48). This is another example of how instruction will be differentiated for ELLs. The petition states that ELLs will participate in literature circles (p. 48). This is another example. The petition states that ELLs will participate in small groups where they will receive explicit language instruction and explicit vocabulary instruction (p. 48). This also supports how instruction will be differentiated for ELLs and explicitly address the needs of ELLs. Thus, this finding is not based on fact and disregards the language explicitly stated in the petition.

*Finding 1A. Fifth bullet. Instructional Strategies: The Petition does not clearly delineate what is language proficiency instruction and what is content instruction. Current research finds that English Learners need well defined instructional programs in both areas. Although the Petition lists numerous strategies and protocols (without differentiating between them) such as SIOP (Sheltered Instruction Observation Protocol), SDAIE, and GLAD, the Petition fails to address how teachers will use those strategies to scaffold content instruction for English Learners.*

**SCALE's Response:**

The District states, as reason for how the SCALE petition lacks soundness, that the petition does not delineate what is language proficiency instruction and what is content instruction. However, "delineating" and "defining" what these are is unnecessary. The law does not require that the petition "define" educational terms, especially those that are commonly understood in practice by licensed professionals. Thus, it is unnecessary to explain or "define" what language proficiency instruction "is" and what content instruction "is." This level of detail required by the District, which involves defining common terms, is unreasonably beyond the Educational Code's expectation that a petition only requires a reasonably comprehensive explanation of the 16 elements.

It is more important that a petition explicitly provide evidence that both will take place. The SCALE petition does this. The petition does explain how language proficiency instruction will take place. SCALE will teach ELD standards to support ELLs with English Language Development (pgs. 48-49). Furthermore, the petition explains what content will be taught. SCALE will teach California Content Standards and the Common Core Standards that have been adopted by the CDE.

Additionally, this finding implies that there is a need to teach language proficiency instruction and content instruction separately. However, it is best practice to teach ELD standards in context, where language lessons are embedded, while teaching targeted content learning objectives (Langer, 2001). The petition provides sufficient explanation



of the content that will be taught. Thus, the approach to developing language proficiency is consistent with sound practice.

Content instruction is scaffolded through the gradual release of responsibility model (p. 18.). Through this instructional approach the teacher models, provides guided instruction, facilitates collaboration between students with similar needs, and provides opportunities for individual practice. This happens daily and in each class throughout the school day. Thus, the content instructional approach is consistent with sound practice.

The Educational Code does not require petitions to differentiate between the different strategies that are proposed in an educational plan. In a prior finding, the District stated that the petition does not suggest how the school will explicitly teach language instruction. However, this statement clearly makes references to a number of different strategies SCALE teachers will use to address the needs of English Language Learners. Thus, this provides evidence that the District acknowledges the language of the petition in some instances and chooses to ignore the language in other instances to benefit its own position. The District's findings reveal their erroneous, biased, and nonobjective review of the SCALE petition. ELLs

*Finding 1A. Sixth bullet. Although language proficiency assessment which is appropriate for English Learners (ADEPT, SOLOM and CELDT) is included in the Petition, there is not a clear plan for how results of those assessment will be used to design and deliver instruction for English Learners.*

SCALE's Response:

These assessment resources are used to determine the level of proficiency of the ELLs. While CELDT results will provide meaningful data as to the proficiency level of each ELL student, other tools will be used to substantiate the reliability of CEDLT results and will support the identification of ELLs' needs (p. 46).

The petition states how this information will be used. The petition states that unit and lesson plans will be modified by teaching ELD standards. The petition states that the CELDT test results will be used to provide support services for ELLs (p. 46). The petition further states that administrators and teachers set language development goals for each ELL student to be articulated in the ELL student's Individual Learning Plan (p.47). Information from individual learning plans and the needs of particular ELL students will determine the types of modified instruction they will receive throughout the entire school day. Thus, language station assignment and activities, expected outcomes for dialogue journals, and small group instruction learning objectives will be based on the needs of ELLs as determined by their determined levels of proficiency (p. 48). Therefore, these examples provide explicit language for how assessment data and determined proficiency levels will determine the types of instructional strategies, supports, interventions, and modifications and accommodations that are needed if necessary (p. 47).

The explanation provided in this section provides evidence that the SCALE petition does, based on the explicit language found in the petition, provide a clear plan as what assessments will be used, how proficiency levels will be determined, and the various ways the needs of ELLs will be met to support English language development. These elements that are explicitly stated in the petition is consistent with sound practice. Thus, this finding disregards the explicit language of the SCALE petition and does not serve as



a valid reason for the District's denial.

*Finding 1A. Seventh bullet. In the area of Interventions, the Petition states that "students who are struggling due to language proficiency will be participating in intervention activities that are specifically focused on decoding and comprehension." Although the Petition acknowledges that a student's level of language proficiency could be a cause for needing intervention, the Petition does not demonstrate what those interventions might include or how they would be differentiated, based on a student's level of language proficiency.*

SCALE's Response:

The District states that the petition does not demonstrate what interventions might be included or how they are differentiated based on ELLs students' proficiency levels. The District furthermore uses this finding as a basis for their position that SCALE lacks a sound education program for the pupils attending the school and specifically for ELLs. However, the plans for how interventions will be determined, what interventions will take place and how they are linked to proficiency levels are explicitly stated.

The petition explicitly states how interventions will be determined. For example, The petition says that SCALE will analyze trends within specific subgroups (p. 44). The petition further provides SCALE will develop interventions for ELLs using the Professional Learning Community Model (p. 49). The petition states that SCALE will use the Response to Intervention approach to analyze data to identify and diagnose the needs of ELLs and place ELLs in performance groups. The needs of each performance group will be determined by the identified trends in performance data (p. 49).

The petition does, in fact, state what interventions might include. The petition states that ELLs, based on their needs, will be placed into performance groups. The petition explicitly states that interventions will take place that re-teach targeted objectives in small learning groups (p. 44). Thus, the re-teaching strategies that will be used for performance groups are determined by the needs of ELLs as specified by the data and the type of modified instruction that will take place will be based on the needs identified by the data. The petition also states that small group tutoring will be implemented to address needs of each performance group (pgs. 22, 44). As demonstrated herein, the Petition provides examples of the types of interventions that will take place, that are differentiated, and based on the determined needs of ELLs and specified by their proficiency levels.

It must also be noted that it is not possible to explicitly state the complete range of interventions that teachers might employ to serve ELLs. Such interventions shall be the product of agreement among SCALE's professional learning community about how to best serve the school's unique ELL population as indicated by the data. Thus, SCALE has the capacity and experience to facilitate an effective professional learning environment where quality interventions are designed, beyond those explicitly stated in the petition, to address the needs of ELLs at all levels.

SCALE is a professional learning community consisting of highly trained teachers and staff. The lead petitioner is aware that high performing schools are those that engage all members of the professional learning community in collaborative efforts toward school improvement. Whole school progress is contingent on the progress of all students. The petitioner has demonstrated his ability to lead professional learning communities where



teachers collaborate on school-wide intervention goals. As the lead petitioner has seen first hand how targeted interventions can positively impact students performing below grade level, SCALE Leadership Academy is likely to replicate the results achieved in similar settings with similar demographics. Therefore, the information in the petition explicitly and adequately states how interventions will support ELLs and therefore this finding fails to serve as a permissible condition for denial.

*Finding 1A. Eighth bullet. Professional development and ongoing support for teachers of English Learners is not well-defined, nor is it differentiated from the Professional Development provided to teachers of English-only students.*

SCALE's Response:

Again, the petition explicitly states how teachers will be engaged to address the needs of English Learners (p. 44). This language further outlines the steps that will be taken. The District expectation that "professional development and ongoing support be defined" is unnecessary and irrelevant. Professional development involves the types of interactions that take place between staff members that increase capacity regarding how to adequately serve various types of learners and their specific needs. A definition is not required; rather, a process for how this is done is relevant for how staff will interact regarding ELLs.

The petition explains how teachers will interact and engage in activities related to ELLs and this sufficiently explains how professional development at SCALE addresses needs. SCALE teachers evaluate data and trends within specific subgroups (e.g. English Language Learners) (p. 44). SCALE staff meetings are structured to evaluate data organize students into performance groups based on their needs (p. 44). CELDT results and ELD assessment tools provide the data for proficiency levels (p. 46). Teachers will design and agree on interventions to address specific performance gaps related to ELLs (p. 49). This language, found in the petition, clearly articulates the types of activities and teacher interactions that are centered on English Language Learners and all students that display specific needs that require immediate and strategic attention by teachers and administration. Thus, the petition clearly presents a sound program in this case. Therefore, this finding, as the other findings regarding ELLs, does not serve as a valid basis for denial.

*Finding 1A. Ninth bullet. Monitoring and Re-Designation (sic) of EL Students — the Petition does not include a well-defined reclassification criteria although it does include general elements of what reclassification criteria should include.*

SCALE's Response:

Reclassification criteria will be based on the criteria for cut-scores as specified by CELDT criteria (p. 46). Again, data from other sources will be used to substantiate the reliability of CELDT results for reclassification (p. 46). SCALE will not rely on one source to make decisions regarding students' academic needs (p. 47). SCALE uses various samples of data to make informed, valid, and reliable decisions about whether students are classified as Beginning, Intermediate, Advanced or anywhere between these classification areas. This approach supports SCALE's ability to serve the needs of the pupils that will attend. Therefore this purported finding does not serve as a permissible basis of denial.



*Finding 1A. Tenth bullet. The Petition does not acknowledge awareness of the widely held, research-based understanding that English Learners often require 5-7 years to acquire a level of language proficiency advanced enough for the student to fully comprehend unmodified (mainstream) instruction. (Collier, 1987, Hakuta, 2000, August and Shanahan, 2006). It is highly likely that many of the students who could enroll at SCALE would be EL students at beginning to intermediate levels of language proficiency for whom there would not be a well-defined program of instruction.*

**SCALE's Response:**

Based on the feedback received from parents, SCALE projects that the majority of ELLs that will attend the school will be in the intermediate level as determined by CELDT cut scores. Based on the criteria for students at the Intermediate Level, SCALE expects that the majority of ELL students will have acquired reasonable fluency.

The California Department of Education also states that students that have acquired "reasonable fluency" can be placed in full immersion classes. In such settings, students are to receive additional support and services. As stated in the petition, there are number of supports in place. Furthermore, the petition indicates that English Language Learners will in fact receive modified instruction. Thus, the SCALE petition is consistent with the literature cited by the District. This indicates that the petition is consistent with the research that the District cites, is consistent with standards established by CDE, and constitutes sound practice.

Although it is likely that the majority of students will have obtained reasonable fluency, it is also likely that a handful of students will be on the lower end of the intermediate level. These students will receive modified instruction, targeted English language development supports, and interventions that directly address their needs. Accordingly, SCALE presents a sound plan for the ELLs for the population it will serve. When SCALE receives students that have less than reasonable fluency, SCALE will provide an appropriate learning environment, English language development instruction, supports, and interventions that will address their needs.

Finally, it should be noted that based on current and past data, and as demonstrated herein below, the District is not in a position to offer recommendations, evaluate, or criticize the quality of SCALE's proposed program to serve the needs of English Language Learners.

The data reveals that the District has consistently failed to meet AYP on Annual Measurable Achievement Objectives for ELLs in all five middle schools since 2010. Again, the District has five middle schools, all of which are in Year 5 of Program Improvement. The District's five middle schools include Frisbie, Jehue, Kucera, Kolb, and Rialto Middle School. The following facts provide the District's success rate concerning ELLs for the past three years for all five schools.

**Frisbie Middle School (Rialto Unified):**

At Frisbie Middle School, the District failed to meet AYP 6 out of 6 times from 2010 to 2012. In 2012, Frisbie did not meet AYP for English Learners in either ELA or Mathematics. Frisbie had similar results in 2011. The school did not meet AYP for

English Learners in either English Language Arts or Mathematics. This is consistent with the data from 2010. Frisbie did not meet AYP for ELL's in either ELA or Mathematics in 2010. Again, the District failed to meet AYP 6 out of 6 times for the ELL subgroup from 2010 to 2012.

Jehue Middle School (Rialto Unified):

Jehue Middle School also failed to meet AYP for English Learners in ELA and Mathematics in 2012. This was also the case at Jehue Middle School in 2011. Jehue Middle School also failed to meet AYP for English Learners in 2011 in ELA and Mathematics. Jehue also failed to meet AYP for ELLs in ELA in 2010. Thus, this provides evidence the District has failed to meet the needs of ELLs as a key subgroup 5 out of 6 times.

Kolb Middle School (Rialto Unified)

In 2012, Kolb successfully met AYP for English Learners in Math and ELA. However, in 2011, Kolb failed to meet AYP for English Learners in Math and ELA. This is consistent with 2010 data. In 2010, Kolb again failed to meet AYP for English Learners in Math and ELA. This provides evidence that the District has failed 4 out of 6 times to meet the needs of ELLs as a group for the last three years.

Kucera Middle School (Rialto Unified)

In 2011, at Kucera Middle School, the District did not meet AYP for ELL's in either English or Mathematics. This was also the case in 2010. In 2010, at Kucera Middle School, the District did not meet AYP for Annual Measurable Objectives for ELLs in either English or Mathematics. This provides evidence that Kucera Middle School has failed 4 out of 6 times to meet the needs of ELLs as a group for the last three years.

Rialto Middle School (Rialto Unified)

In 2012, Rialto Middle School failed to meet AYP in Math for ELL's. In 2011, Rialto Middle failed to meet AYP in Math for ELLs. This was also the case in 2010. Rialto Middle also failed to meet the needs of ELLs in Math in 2010. This provides evidence that the District failed to meet AYP 3 out of 6 times for the ELL subgroup in the last three years.

This data should be sufficient to suggest that SCALE is well informed about District data and the population it will serve. The five middle schools in the District have consistently failed to address the needs of ELLs, yet the District challenges SCALE's approach to addressing the needs of this significant population. The data reveals, after aggregating the facts provided in this section, that the District has failed to meet the needs of this particular subgroup 22 out of 30 times in the last three years. This means that the District has a 73% failure rate concerning English Language Learners since 2010. In other words, the District has a 27% success rate with addressing the needs of ELLs at the



middle school level. SCALE is truly concerned with these numbers. Finally, this data provides insight as to the District's credibility and their ability to question the merit of SCALE's program regarding ELLs.

*Finding IB. First finding. Understanding of the students the school plans to educate: Pg. 8 Statement of need is based on 2008-2010 test data, which at this point is two years old.*

SCALE's Response:

This finding does not provide a factual finding for how the SCALE petition raises concerns regarding its educational program. As set forth detailed above, the current data still reflects that the District is failing to meet the needs of its students on a global level. ***Again, all five middle schools in the District are currently in program improvement.*** Furthermore, African-American and Latino males in the District still continue to perform dramatically lower than their peers.

SCALE is keenly aware of the District's inability to serve various subgroups. Notwithstanding this, the fact that more recent data was not included in the most recent petition does not provide a valid basis for why the school is unlikely to succeed and therefore is an invalid basis for denial.

*Finding IB. Second finding. Teaching methodologies: Pg. 18 and pg. 28 Only one teaching methodology is named or identified. GEL —District staff does not believe a school can be built on a single strategy.*

SCALE's Response:

This statement is inaccurate as the petition explicitly states a variety of strategies. SCALE has included a number of teaching methodologies including the Gradual Release of Responsibility, Modeling, Scaffolding Instruction, and Thematic Teaching (p. 48). This is a dramatic disregard for the content found in the charter. The District has noted that this is a concern regarding our educational program. Therefore, this concern is unjustified and invalid and cannot serve as basis for denial.

*Finding IB. Third finding. Scope of sequence of skills to be taught: Pg. 24 Goals/objectives set forth in each core area are weak. Instead of making actual commitments, the Petition uses verbs such as "expose," "develop" and lacks precise curricular goals/objectives.*

The petition explicitly states that California Content Standards will be taught. The petition explicitly states that the technology literacy elective will support the core content standards. The petition clearly states the school wide goals and quarterly goals that will be met. The District disregards the language of the petition. These are explicitly stated in the petition and present a strong basis for the skills that will be taught at SCALE. This furthermore provides factual support for how SCALE's petition provides a sound educational program.

The District's complete disregard for the contents of the petition (while making untrue assertions about the nature and quality of the petition) reflect not only the District's lack of diligence but its attempt to find any basis – even those that are untrue – to deny the SCALE petition.



*Finding IB. Fourth finding. Scholarly research:*

*Pg. 33 Advisory curriculum is not specified.*

*Pg. 69/70 Program and Implementation Plan. District staff believes the contents is a "list of stuff" copied from a methods book. There is no evidence of how these "initiative methods" align with each other. Also, the timeline, week to be implemented has no rhyme or reason. It is entirely unclear why counseling services or interventions are described as "initiative methods."*

*Pg. 21/22 Description of "Professional Development" is vague. Specific PD goals and activities are lacking. It is unknown what training teachers and support staff will be participating in.*

*Pg. 23 No provisions for GATE students are evidenced.*

*Pg. 33 Although it is stated that IP will raise the academic achievement of at risk students, no explanation of how this will be accomplished is provided.*

SCALE's Response:

These finding are beyond the "reasonably comprehensiveness" standard provided under statute. As reflected below, the District's "findings" with regard to this section are vague, ambiguous, conclusory, unsubstantiated, and hardly constitute a "factual finding" required to support denial.

Advisory curriculum

SCALE will use *The Advisory Guide* for the Advisory curriculum (Poliner & Lieber, 2004).

Program and Implementation Plan

The Districts' criticism of the Program and Implementation plan represents a criticism without any factual basis for how the plan is contrary to sound practice. Therefore, this does not represent a valid reason for denial.

Professional Development

SCALE's professional development goal and objectives are explicitly stated and in various context (pgs. 21, 22, 44, 47).

GATE Students

The petition explicitly states how SCALE will serve students performing above grade level (p.44). Therefore, this will not serve as a valid basis for denial.

Individual Learning Plans

The petition explicitly states what ILP's are intended to achieve. Thus, this will not serve as a valid basis for denial.

*Finding II. 1. Finding regarding Table I- Five Year Operating Budget - \$250,000 Cash Flow & Revolving Loan is included as part of the revenue in 2012-13, which is the incorrect recognition for the loan. There is no indication of when the loan would be repaid. Loan is also included as part of the fund balance which gives the appearance that the School will have the reserves to repay the loan.*

SCALE's Response:

**Revolving Loan.** The classification of the Revolving Loan is immaterial to whether or not the school will be able to pay it back. The purpose of the Revolving Loan is to resolve a problem inherent to most new charter schools: without Loan funds, few would have sufficient reserves to meet all commitments AND maintain positive cash flow continuously. This is the very reason why the legislature established the Charter Schools Revolving Loan Fund. A school that does not demonstrate need for these funds is not eligible to receive them. SCALE fits the profile of a school that will be eligible, because (1) there is a need for the funds at the end of Year 1, and (2) the school demonstrates the ability to repay the Loan while maintaining positive cash flow and developing appropriate reserves over the course of the Loan repayment period.

Moreover, the plan demonstrates that SCALE will maintain net assets of 25% or greater throughout the term of the charter. Not only does the plan demonstrate how the Revolving Loan will be repaid, it provides an appropriate cushion for unanticipated expenses.

*Finding II 2. Finding regard Table II- Student Data. First bullet. Growth of 125 students per year is an assumption that contradicts the overall enrollment trend in RUSD. Each year the charters enrollment will grow at a rate of 125 students and retain all prior year students. Assumes a 95% attendance ratio which appears aggressive considering the school district achieves these rates through the regular school day and the attendance recovery via Step Up.*

SCALE's Response:

The enrollment trends of RUSD are irrelevant to SCALE's expected school enrollment. Furthermore, the District provides no factual basis for how this suggests the school is unlikely to succeed. This fails serve as a valid basis for denial. Hardly a "factual finding," speculation as to whether or not SCALE will achieve 95% attendance rate is not a factual basis for denial.

*Finding II 3. Finding regarding Table III- Staffing and Personnel Data. Total teacher cost per year assumes all teachers get paid at the same rate. For example, in year three the School has 18 teachers at Step 3 \$48,128 for a total cost of \$866,304. Assumptions used for Health & Welfare (H&W) package are not reasonable. The cost of H&W is estimated to be \$500/month; this would not provide a comparable plan to that offered by the District. The current cost incurred by the District is more than double the amount presented by the School.*

SCALE's Response:

Charter schools typically experience dramatically lower health and welfare benefits rates



because they are not locked into collective bargaining agreements that establish much higher benefit rates than in the private sector, even for professional occupations. Charter schools tend to offer plan options similar to those found in the private sector, incorporating deductibles, HMO options, and partial spouse and family coverage. \$500 is a typical monthly average for many charter schools.

*Finding II 4. Table IV- Revenues. General Purpose Block Grant for all grades includes COLA, the School Service of California advisory committee has advised CA charter schools not to include a COLA given that it most like will not be funded. If the School includes the COLA it must have a contingency plan to address the shortfall if not funded. Categorical Block Grant revenue per ADA amount is higher than the \$400 published by CDE. Assumes EIA will have a per ADA growth over the next five years, program has incurred cuts in the current year and if projected to incur future cuts. ADA amount is recommended to be projected at \$325.*

SCALE's Response:

**COLA.** The passage of Proposition 30 eliminated the trigger cuts which were assumed in the revenue levels. As the table below shows, the added revenue from this development well exceeds the amount of the assumed COLAs in the early years. By Year 5, a "no COLA" assumption begins to have a modest affect, however, the chances that 0% COLAs will persist decrease each year. In the unlikely event that 0% COLAs were to persist for five more years, Scale would have many option for bringing expenditures into alignment accordingly.

**Categorical Block Grant rates and EIA.** These rates are based off a \$400 level for 2012-13, with the state revenue COLA applied. Again, the passage of Proposition 30 well more than offsets these COLA assumptions.

<b>SCALE Leadership Academy</b>	<b>2013-2014</b>	<b>2014-2015</b>	<b>2015-2016</b>	<b>2016-2017</b>	<b>2017-18</b>
State revenues in proposed financial plan	\$754,527	\$1,615,029	\$2,458,843	\$2,521,089	\$2,591,766
State revenues with 0% COLA and no trigger cut	\$791,178	\$1,654,318	\$2,464,359	\$2,464,359	\$2,464,359
Change, with 0% COLA and no trigger cut	\$36,650	\$39,289	\$5,516	-\$56,730	-\$127,407
Cumulative change, with 0% COLA and no trigger cut		\$75,939	\$81,455	\$24,724	-\$102,683

Reserves in proposed financial plan	\$ 362,727	\$ 507,475	\$ 625,173	\$ 797,654	\$ 984,911
Reserves with 0% COLA and no trigger cut	\$ 397,173	\$ 579,004	\$ 701,847	\$ 820,302	\$ 886,346
Change, with 0% COLA and no trigger cut	\$ 34,446	\$ 71,529	\$ 76,674	\$ 22,648	\$ (98,566)

% reserves in proposed financial plan	25%	28%	25%	31%	37%
% reserves with 0% COLA and no trigger cut	27%	31%	28%	32%	35%
Change, with 0% COLA and no trigger cut	2%	3%	3%	2%	-2%

*Finding II 5. Finding regarding Table VII — Expenditures. The per enrolled student amounts for instructional materials, staff development, and ongoing technology seems underestimated.*

SCALE's Response:

Again, the District's convenient speculation as to whether the Petition's information is underestimated or not provides not "factual" basis for denial. The District provides no evidence or basis for how these numbers are underestimated. The amounts specified



under the expenditures in table VII are budgeted accurately. Therefore, this is an impermissible basis for denial and does not present a valid reason why the school is unlikely to be successful.

*Finding II 6. Finding regarding Table IX — Cash Flow. Cash flow is presented with the assumption that the November triggers do not occur, however, the percentages used do not reflect the approved rates in EC 14041(a) if the trigger does not occur.*

SCALE's Response:

**Cash Flow.** It is not clear how the reviewer determined the percentages used in the cash flow tables, since it is not possible to determine what they are from the pdf format. The cash flow schedule follows the projection published by the Charter Schools Development Center (please see the CSDC Report).

*Finding II 7. Figure 17 — School Calendar (page 41). Total number of days indicates "190 Instruction Days." According to the calendar provided, there are 192 days.*

SCALE's Response:

The petitioner is unaware how the District counted 192 Instructional Days. It this is in fact accurate, this is a technical oversight, can easily be amended, and does not serve as an adequate basis for denial. Therefore, this is an impermissible condition for the denial of the SCALE petition.

*Finding III. [Education Code section 47605(b)(3)]Education Code section 47605(a) requires that a charter petition be signed by either (1)"a number of parents or legal guardians of pupils that is equivalent to at least one-half of the number of pupils that the charter school estimates will enroll in the school for its first year of operation" or (2) "a number of teachers that is equivalent to at least one-half of the number of teachers that the charter school estimates will be employed at the school during its first year of operation."*

*The petition must "include a prominent statement that a signature on the petition means that the parent or legal guardian is meaningfully interested in having his or her child or ward attend the charter school, or in the case of a teacher's signature, means that the teacher is meaningfully interested in teaching at the charter school." The proposed Charter is required to be attached to the Petition. In this case, the most recent Charter submitted to the District includes signatures of five teachers, as set forth at pages 220 and 221. The signature pages submitted do not meet the statutory requirements for submitting the Charter to the District as the signatures are all dated in early May 2012. At the October 24, 2012 public hearing, Mr. Wynder indicated that he made substantive revisions to several areas of the Charter after the ACCS's recommendation of denial in June 2012. He did not indicate that the revised charter had been reviewed by the five individuals whose signatures he submitted. Thus, the signatures from May 2012 do not meet the minimum requirements as they are not for the Petition that is currently being considered by this Board. For this reason, the District does not accept the teacher signatures as meeting the minimum requirements of Education Code section 47605(a).*

SCALE's Response:

The signatures collected in June were done so at request of the state and were not tied to any particular petition cycle. The petitioners agreed that the Lead Petitioner could make any necessary changes to the petition to negotiate the terms for approval. The Lead Petitioner proceeded to make the necessary changes to negotiate SCALE's approval. The petitioners received a copy of the changes. Therefore, this is an impermissible basis for denial for the SCALE petition.

As our response to the District findings demonstrate, the SCALE petition provides explicit language regarding English Language Learners that were consistently ignored by the reviewers. This proves that SCALE provides a strong and sound educational program for the pupils that will attend and especially ELLs. The petition also includes a strong budget and presents no factual evidence as to SCALE's inability to sustain the program that is proposed. Thus, there is no real evidence that suggests that SCALE is unlikely to succeed.

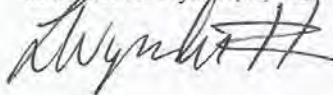
Furthermore, the language used by the District establishes that the District did not, in good faith, provide an unbiased and un-objective review of the petition. The District's purported "factual findings" either: (1) are unsupported by any facts and are based on pure speculation, and/or (2) completely misrepresent the absence of certain content, that as established above, was in fact contained in the petition. On several occasions, the findings reveal that the explicit language in the petition was ignored in some cases and used in other cases to support the District's petition. These inconsistent findings also suggest that the District did not review the merit of the SCALE petition based on the explicit written content. These tactics are designed to establish some – any – attenuated basis for denial where none truly exists.

As detailed herein, the District's findings are invalid and do not provide a factual basis for denial.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Lawrence C. Wynder, II, Ed.D







Gary S. Thomas, Ed.D., Superintendent

San Bernardino County Superintendent of Schools

# **Schools & Communities for Advanced Learning Experiences (*SCALE*) Leadership Academy**

*Appeal to the San Bernardino County Board of Education  
of a Charter Denial by Rialto Unified School District*

**Report of Findings and Recommendations**

San Bernardino County Superintendent of Schools Charter School Advisory Committee

Presented on April 1, 2013

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## Executive Summary

California law governing charter schools allows county boards of education to hear an appeal by a charter school petitioner after it first has been denied by a school district.

The Schools and Communities for Advanced Learning Experiences (*SCALE*) Leadership Academy seeks County approval of its charter appeal to establish a grades 6-8 public charter school that sets students on a path for success in high school, college, and beyond. It is their aim “that *SCALE* students: 1) are prepared to perform at top levels in their high schools; 2) have obtained an early college awareness; 3) will have a drive to succeed in all subjects, embracing all academic challenges; and, 4) have developed a personal commitment to serve as leaders of the 21st century.” (p.13)

The intent of *SCALE* Leadership Academy is to open in August 2012 with 125 sixth graders. Each subsequent year, *SCALE* plans to enroll a new class of 125 students for the 6th grade with students in the sixth grade advancing to the next grade level. This growth plan will allow the school to create a cohesive school culture, where all students and families will be known and feel a sense of belonging.

*SCALE*'s education program draws upon a wide range of educational research, which includes learning and instruction, educational psychology, literacy studies, multi-cultural education, cognitive studies, and specifically, how these subjects identify conditions required for the success of the “at risk” student.

After denial of its charter petition on November 14, 2012 by the Rialto Unified School District Board of Education, the Petitioner initiated the appeal process by meeting with County Schools staff on January 17, 2013. The purpose of the meeting was to ensure that the appeal petition was complete per County Board Policy 603. While technical changes are permitted, material revisions to the district petition are not. *SCALE* submitted this charter appeal on January 17, 2013, which was within the filing period allowed by law. The County Board received the Petition on February 4, 2013, which started the timeline for review and action to be taken. The County Board held the required public hearing at its meeting on March 4, 2013.

The San Bernardino County Superintendent of Schools (SBCSS) Charter School Advisory Committee reviewed the charter appeal as well as collateral materials and has published its findings and recommendations in this report.

The petition was submitted four times to the Rialto Unified School District. This petition is the second appeal to the County Board.

California's charter laws (Education Code 47600-47664) outlines a system of alternative public schools.

The Legislative intent in creating charter schools was to: 1) improve student learning, 2) increase learning opportunities for all, with special emphasis on expanded learning experiences for students who are identified as academically low achieving, 3) encourage the use of different innovative teaching methods, 4) create new professional opportunities for teachers, 5) provide parents and students with expanded choices, 6) hold charter schools accountable for meeting measurable student outcomes, and 7) provide competition to stimulate improvement. In “exchange” for focusing on these areas, large portions of the education laws that govern traditional public schools are waived for charter schools, but not without limits.

As to whether or not the governing board should approve a charter, the Education Code requires the board to answer six “yes-no” questions regarding charter petitions:

- 1) Is the proposal educationally unsound?
- 2) Are the petitioners demonstrably unlikely to successfully implement the program set forth in the petition?
- 3) Does the petition fail to meet signature requirements?
- 4) Does the petition fail to affirm that it is nonsectarian, will not charge tuition, and will not discriminate?
- 5) Does the petition fail to provide a reasonably comprehensive description of 16 required elements?
- 6) Is the petition inconsistent with state law?

**If the board answers “yes” to any of these questions, the petition may be denied.**

**1) Is the proposal educationally unsound? Yes**

In regard to specific instructional methods and strategies, the petitioner indicates that *SCALE* will use a standards-based curriculum. It does not cite the standards adopted in August 2010. Instead, it references standards adopted by the California Department of Education in 2001 (pps. 24-26). Recent standards are significantly different. Students will not be prepared to compete with others who are using the 2010 Common Core State Standards. As they leave middle school, will not be prepared to enter comprehensive high school programs that are using the Common Core State Standards.

**2) Are the petitioners demonstrably unlikely to successfully implement the program set forth in the petition? Yes**

The budget for the first five fiscal years is presented on pages 181 – 196. Based on Committee review of the budget presented, there are concerns which will impact the fiscal solvency and the likelihood that the *SCALE* will successfully implement the program set forth in the petition.

*SCALE* is projecting enrollment of 125 students during the first year of operation for implementation of Grade 6. The charter petition outlines a plan of adding one grade level each subsequent year for grades 7 and 8 with an additional 125 students per grade. The petition does not contain a sample of interested parents or any other documentation sufficient to determine if the enrollment of 125 per grade level will be obtained in the first and subsequent years. Based on the 2010-11 enrollment of grades 6-8 for Rialto Unified School District, the charter’s projected enrollment is approximately 6% of the district’s enrollment. Enrollment is critical to the fiscal solvency of the charter. If enrollment does not materialize as projected, this will affect the charter’s ability to maintain a positive cash and/or fund balance.

**3) Does the petition fail to meet signature requirements? No**

Education Code section 47605(a)(1)(A) requires that the Petition be signed by a number of parents or legal guardians of pupils that is equivalent to at least one-half of the number of pupils that the charter school estimates will enroll in the School for its first year of operation. Alternatively, subdivision (a)(1)(B) requires that the Petition be signed by a number of teachers that is equivalent to at least one-half of the number of teachers that the School estimates will be employed at the school during its first year of operation.

Additionally, Education Code section 47605 requires that the Petition shall include “a prominent statement that a signature on the petition means that the parent or legal guardian is meaningfully interested in having his or her child or ward attend the charter school, or in the case of a teacher’s signature, means that the teacher is meaningfully interested in teaching at the charter school.



The proposed charter shall be attached to the petition.” On pages 200 and 201 of the *SCALE* petition, the signatures of five teachers are included that certify that they are meaningfully interested in teaching at the *SCALE* Leadership Academy.

**4) Does the petition fail to affirm that it is nonsectarian, will not charge tuition, and will not discriminate? *Yes***

Although the petition lists general strategies to achieve racial and ethnic balance that is reflective of the community for initial enrollment it does not list methods of transporting students to and from school or means or means available to assist families that desire to attend the charter but unable to afford transportation which may affect the demographics/racial and ethnic balance of the school due to location of the potential school site, and methods are not indicated to transmit the marketing information/strategies to the large English Language Learner population that currently exists in the local school district boundaries and surrounding areas.

**5) Does the petition fail to provide a reasonably comprehensive description of the 16 required elements? *Yes***

There are 16 required elements for a charter to address for this type of petition. Of the 16, the Committee found that Elements A, B, C, D, E, F, G, I, J, K, L, N, P failed to have reasonably comprehensive descriptions. Detailed comments are noted for each element in the pages following the executive summary and introduction.

**6. Is the petition inconsistent with state law? *No***

The petition has complied with the requirements of state law as it relates to charter school petitions.

**Action by the County Board of Education**

Two options are open to the County Board regarding the appeal petition by *SCALE* Leadership Academy. The County Board may:

1. Approve as submitted with an acceptable memorandum of understanding.
2. Deny the charter appeal and make written factual findings.

Therefore, the SBCSS Charter School Advisory Committee recommends that the San Bernardino County Board of Education **deny** the *SCALE* Leadership Academy appeal of the district denial by Rialto Unified School District.

## Introduction

Except where specifically required, charter schools are generally exempt from California State laws in the Education Code governing school districts. Some of the laws with which charter schools must comply are:

- State and Federal constitutions
- The California Charter Schools Act (Education Code Section 47600 et. seq.)
- All federal laws (for example, special education law (IDEA), Americans with Disabilities Act, and the Rehabilitation Act)
- Laws that generally apply to governmental entities but not specifically to school districts (for example, open meeting laws, employment laws, contracting laws)
- All laws that are specifically a condition of funding for a specific program for which the charter school chooses to participate (e.g., K-3 class size reduction)
- Laws establishing minimum age for school attendance
- Laws governing independent study programs (whether defined as home schooling, distance-learning or otherwise)
- Educational Employees Relations Act (Government Code Section 3540 et. seq.)
- State pupil testing requirements (e.g. API, PSAA, STAR, CAHSEE)
- Specific provisions of law related to teacher's retirement and employee relations

Since charter school law waives large portions of the Education Code, a properly written charter school petition is crucial because the chartering agency is held accountable for oversight. To pass muster, the petition must spell out the specifics of who does what, where, when, and how. At stake for this charter is a multi-million dollar agreement that uses public funds for the initial term of the charter. Potential students served by the charter also are at stake because the quality of their education affects them for a lifetime.

Charter schools must get approval from a charter authorizing entity; in California that means a school district Board of Education, county office of education Governing Board, or the State Board of Education. A charter school can be created or organized by a group of teachers, parents, and community leaders or a community-based organization. Specific goals and operating procedures for the charter school are detailed in an agreement (or "charter") between the sponsoring board and charter organizers. The charter petition serves as a **contract** between the authorizing entity and the charter school and carries the weight of law. As such, a charter petition must have a careful review of the language in the context of a binding contract.

A charter petition is a complex document, both for the petitioner and the reviewing agency. Most petitions begin with a submission to a school district. Education Code 47605 sets forth the requirements for the petition and limits the grounds for a school board to disapprove. The district decision can be appealed to the County Board of Education, but the scope of the appeal is limited to the proposed educational program set forth in the original petition with minor allowances for technical changes such as changing the name of the authorizing entity from the school district to the county, etc.

What is a charter appeal to the County Board of Education? A charter appeal is a second review of the proposed educational program and operations plan for the charter school that has been denied by a school district. A charter appeal must be a complete petition including the district's findings of fact for denial. The appeal is not an opportunity for the petitioner to rewrite the charter based on the district's findings. Material revisions are not allowed. Likewise, an appeal is not a review of alleged due process errors on the part of the district that received the original petition. An appeal is a review of the merits of the proposed charter using the specific points enumerated in law.



When a charter petitioner wants to appeal a district denial, SBCSS staff will meet with the petitioner(s) with two specific goals in mind. The first is to explain the process of an appeal to the petitioner including applicable County Board policies. The second goal is to ensure that the charter petition is complete. The purpose is to find out what is in the petition and where to locate it. Questions of the petitioner are very specific: "on what page do we find ...?" Once the checklist is finished for a complete petition, the matter is ready for placement on the County Board of Education's agenda.

These steps were followed with the *SCALE* Leadership Academy charter appeal petition and the petitioners seemed to understand the structure of the review process.

The county's review of the petition does not begin until a complete petition has been submitted. The scope of the review is limited to the proposed educational program and operations plan for the charter school. In San Bernardino County, the Board has adopted policies 600-612 to address charter petitions. Prior to an acceptable submission of an appeal, SBCSS staff meet with the petitioners to ensure that the petition is complete, that the petitioner can identify pages in the petition that address specific areas described in Board policy, and that the petitioner may only make technical changes to the charter.

Although California law governing charter schools has a number of requirements for what is needed in a charter petition; how and where that information is presented can vary. Therefore, the meeting between SBCSS staff and the petitioner is a discovery process to learn what is in the charter petition.

SBCSS has a committee of experts from multiple disciplines. The value of multiple reviewers is the ability to look at the charter petition from more than one perspective. For example, a charter petitioner may describe an academic program that is rich in content and staffing; however, if the budget fails to recognize reasonable costs necessary to support the proposed academic program, a recommendation to deny is a "fair" assessment. SBCSS and schools districts also rely on attorneys for legal counsel. Since the charter petition is a contract between the authorizing entity and the petitioner, counsel representing the district or county may find issues in the charter language from a legal perspective.

If a school board denies the charter petition, the law requires that the board adopt written findings of fact for denial. The petitioner can use those findings to make improvements and reapply with a new petition to that district. Alternatively, the petitioner can appeal to the county essentially the same petition already once denied. In either case, the basis for decision-making should focus on the merits of the program as submitted.

With an appeal of a district denial, one of the required core documents for submission is the district's findings of fact for denial. The district's findings are included in Appendix A of this report.

An appeal is not an opportunity to remedy flaws in the petition or documents missing from a district submission. The correct remedy is for the petitioner to make changes and corrections to the petition and submit it as a new petition to the school district. Material revisions are not allowed in an appeal, only technical changes.

As to whether or not the governing board should approve a charter, the Education Code requires the board to answer six "yes-no" questions regarding charter petitions: 1) Is the proposal educationally unsound? 2) Are the petitioners demonstrably unlikely to successfully implement the program set forth in the petition? 3) Does the petition fail to meet signature requirements? 4) Does the petition fail to affirm that it is nonsectarian, will not charge tuition, and will not discriminate? 5) Does the petition fail to provide a reasonably comprehensive description of 16 required elements? 6) Is the petition inconsistent with state law? If the board answers "yes" to any of these questions, the petition may be denied.

A common complaint by charter petitioners is that the district findings are capricious or groundless. Therefore, the Committee compares the district's findings of fact for denial to the original petition.

## **Required Element A: Description of the School's Educational Program**

Education Code 47605 (b) (5) (A) (i) "A description of the educational program of the school, designed, among other things, to identify those whom the school is attempting to educate, what it means to be an "educated person" in the 21<sup>st</sup> century, and how learning best occurs. The goals identified in that program shall include the objective of enabling pupils to become self-motivated, competent, and lifelong learners."

### **Standard for Review**

Does *SCALE* Leadership Academy provide a reasonably comprehensive description of the required element?

#### **Reasonably Comprehensive**

- *SCALE* defines a student prepared for the 21st Century as having: Strong knowledge of academic content; problem solving capability (of both complex and well-structured problems); creativity and the ability to work with multiple intelligences; motivation to learn, intellectual independence and ability to self-educate; communications skills (oral, written, team work, and interpersonal skills); and global awareness vision, a sense of human responsibility and ethics.
- There are six key elements that *SCALE* will provide that will ensure that learning occurs in the best way that it can (pg. 17). These include: 1) quality instruction; 2) research-based instructional strategies; 3) high expectations; 4) summative and formative data-driven decision making; 5) administrative and teacher leadership; and 6) professional development.
- The descriptions of the instruction in standards, however, should be commended for emphasizing the development of "habits of mind" in each content area that stress "evidence, connections, patterns, and supposition, and meaning that will produce active and thoughtful" students in the content area (pps. 24-26).
- *SCALE* proposes a model for English Learner support that includes diagnostic testing, regular assessment, plans in the ILP and in case of RtI designations and instructional strategies and professional development for teachers that support a full inclusion model. It is wide-ranging (pps. 45-51).

#### **Not Sufficient**

- In regards to specific instructional methods and strategies, the petitioner indicates that *SCALE* will use a standards-based curriculum. It does not cite the standards adopted in August 2010. Rather, it relies upon the standards adopted by the California Department of Education in 2001 (pps. 24-26). The new standards are dramatically different. Students will not be prepared to compete with others who are using the 2010 Common Core State Standards (CCSS), and as they leave middle school, will not be prepared to enter comprehensive high school programs using current standards.
- In addition, on page 27, Figure 8, shows evidence of the petitioner emphasizing distinctions between types of knowledge. Unfortunately, this only partially aligns to the Depth of Knowledge approach that teachers will need to instruct and assess students the CCSS.
- Supplemental Materials must be identified, or other strategies for identifying appropriate instructional topics and strategies would need to be used to provide adequate instruction in relation to the CCSS.

- While the petition includes ELD standards and alludes to ELD supported instruction, there must be required time only for directed English Language Development for students, during the school day, so that students may take advantage of the remainder of their day with maximum benefit.
- The Charter is depending on the District for all special education services, including special education assessments. Charter administrators / teachers are not required to have a special education credential, only a "working knowledge" of special education. There is no mention of a 'continuum of special education services to meet the needs of mild to severe handicapping conditions. There is no mention of how they will accommodate students that require a Special Day Class setting per IEP requirement.

## Committee Comments

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*SCALE* defines a student prepared for the 21st Century as having: Strong knowledge of academic content; problem solving capability (of both complex and well-structured problems); creativity and the ability to work with multiple intelligences; motivation to learn, intellectual independence and ability to self-educate; communications skills (oral, written, team work, and interpersonal skills); and global awareness vision, a sense of human responsibility and ethics. The preparation for this skill and knowledge set should start when students are in their pre-school years.

The audience the school is proposing to work with begins with sixth graders and would add a new grade up to 8th grade each year, unless there are enough 7th grade applicants the first year to warrant a class of 7th graders in addition to the 125 sixth graders (pg. 16).

There are six key elements that *SCALE* will provide that will ensure that learning occurs in the best way that it can (pg. 17). These include: 1) quality instruction; 2) research-based instructional strategies; 3) high expectations; 4) summative and formative data-driven decision making; 5) administrative and teacher leadership; and 6) professional development.

In regard to specific instructional methods and strategies, the petitioner indicates that *SCALE* will use a standards-based curriculum. It does not cite the standards adopted in August 2010, however, but the standards adopted by the California Department of Education in 2001 (pps. 24-26). The new standards are dramatically different. Students will not be prepared to compete with others who are using the 2010 Common Core State Standards (CCSS), and as they leave middle school, will not be prepared to enter comprehensive high school programs that are using them.

The descriptions of the instruction in standards are commended for emphasizing the development of "habits of mind" in each content area that stress "evidence, connections, patterns, and supposition, and meaning that will produce active and thoughtful" students in the content area (pps. 24-26). In addition, on page 27, Figure 8, shows evidence of the petitioner emphasizing distinctions between types of knowledge. This only partially aligns to the Depth of Knowledge approach that teachers will need to instruct and assess students the CCSS.

On pages 30 and 31, the petitioner references the use of backward planning and project based learning. These will be useful with the new CCSS.

An advisory curriculum and an Individual Learning Plan (ILP) will be developed for each student. The sample ILP shows an example focused almost exclusively on knowledge and comprehension levels, and



some application of Bloom's Taxonomy. This document should infuse higher levels of thinking, even at the earliest grades, to accommodate current expectations of student achievement.

In regard to instructional materials, a combination of current instructional texts will be used in conjunction with several academic software programs that may be used in class, after school, or at home (pgs. 36-37). Supplemental Materials must be identified, or other strategies for identifying appropriate instructional topics and strategies would need to be used to provide adequate instruction in relation to the CCSS.

The Petitioner proposes a model for English Learner support that includes diagnostic testing, regular assessment, plans in the ILP and in case of Response to Intervention ( RtI), designations and instructional strategies and professional development for teachers that support a full inclusion model. It is wide-ranging (pps. 45-51). However, while it includes ELD standards and alludes to ELD supported instruction, there needs to be required time only for directed English Language Development for students, during the school day, so that students may take advantage of the remainder of their day with maximum benefit.

The Charter is depending on the district for all special education services, including special education assessments. The Charter administrators / teachers are not required to have a special education credential, only a working knowledge of special education. There is no mention of a 'continuum of special education services to meet the needs of mild to severe handicapping conditions. There is no mention of how they will accommodate students that require a Special Day Class setting per IEP requirement. Who will staff this classroom? It appears they are depending on the SBCOE to accommodate the needs of severely disabled students, as there was no mention of how they would serve medically fragile students and the nursing requirements: g-tube feeding, trach suctioning, and lifting equipment to accommodate movement and toileting needs. There was no mention of students with Low Incidence needs such as Hearing Impaired, Orthopedically Impaired, and/or Visually Impaired. Is the district responsible to provide these services? Will the classrooms and school site have the necessary ADA accommodations?

## Conclusion

*SCALE* Leadership Academy **does not** provide a reasonably comprehensive description of this element as required in Education Code 47605 (b) (5) (A) (i).

### **Required Element A: Transferability of Courses**

Education Code 47605 (b) (5) (A) (ii) “If the proposed school will serve high school pupils, a description of how the charter school will inform parents about the transferability of courses to other public high schools and the eligibility of courses to meet college entrance requirements. Courses offered by the charter school that are accredited by the Western Association of Schools and Colleges may be considered transferable and courses approved by the University of California or the California State University as creditable under the “A” to “G” admissions criteria may be considered to meet college entrance requirements.”

### **Standard for Review**

Does *SCALE* Leadership Academy provide a reasonably comprehensive description of the required element?

#### **Reasonably Comprehensive**

- Not Applicable

#### **Not Sufficient**

- Not Applicable

### **Committee Comments**

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This element does not apply since *SCALE* Leadership Academy will serve middle school students and not high school students.

## **Required Element B: Measurable Pupil Outcomes**

Education Code 47605 (b) (5) (B) “The measurable pupil outcomes identified for use by the charter school. ‘Pupil outcomes,’ for purposes of this part, means the extent to which all pupils of the school demonstrate that they have attained the skills, knowledge, and attitudes specified as goals in the school’s educational program.”

### **Standard for Review**

Does *SCALE* Leadership Academy provide a reasonably comprehensive description of the required element?

#### **Reasonably Comprehensive**

- In Element B, the petitioner first cites goals in English language arts, mathematics, science, and social studies that focus on having 80% to 100% of students reaching proficiency on quarterly and semester exams.
- In English language arts, the measures that are focused upon for analysis are effective responses to historically and culturally significant works of literature. This can tie into the students’ readiness for 21st century citizenship.

#### **Not Sufficient**

- There is no discussion of the strong new focus on expository text for reading critically or for assessing skills in varied types of expository writing.
- In regards to mathematics for these middle school students, the CCSS Standards for Mathematical Practice, which students will be starting to emphasize in elementary school and will need to demonstrate in their high school years, should be a primary aspect of what is assessed.
- To align with the Common Core State Standards, both science and history/social science should indicate that students will be participating, as a substantial part of the program, in reading expository text, and in to carry out expository writing and there should be assessments to indicate progress in these areas.

## **Committee Comments**

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The measurable pupil outcomes for this petitioner are set by the goals that are described in the Mission of the school (pg. 13, under Educational Philosophy) and in its definition of what it means to be an educated person in the 21st Century (pg. 16). The former indicates that “upon leaving *SCALE*, it is our aim that *SCALE* students: 1) are prepared to perform at top levels in their high schools; 2) have obtained an early college awareness; 3) will have a drive to succeed in all subjects, embracing all academic challenges; and, 4) have developed a personal commitment to serve as leaders of the 21st century. In the latter citation, The petitioner cites the Massachusetts Institute of Technology (MIT) faculty in defining the 21st century well-educated person as one who has: strong knowledge of academic content; problem solving capability (of both complex and well-structured problems); creativity and the ability to work with multiple intelligences; motivation to learn, intellectual independence, and ability to self-educate; communication skills (oral, written, teamwork, and interpersonal skills); and global awareness, vision, a sense of human responsibility and ethics.



In Element B, the petitioner first cites goals in English language arts, mathematics, science, and social studies that focus on having 80% to 100% of students reaching proficiency on quarterly and semester exams. In English language arts, the measures that are focused upon for analysis are effective responses to historically and culturally significant works of literature. This can tie into the students' readiness for 21st century citizenship. Oral skill and persuasive writing are also part of what the current Common Core State Standards (CCSS) call for. There is no discussion of the strong new focus on expository text for reading critically, or for assessing skills in varied types of expository writing. In mathematics, for these middle school students, in addition to the goals listed here, the CCSS Standards for Mathematical Practice, which students will be starting to emphasize in elementary school, and will need to demonstrate in their high school years should be a primary aspect of the what is assessed. To align with the CCSS, both science and history/social science should indicate that students will be participating, as a substantial part of the program, in reading expository text, and in to carry out expository writing and there should be assessments to indicate progress in these areas.

The measurable goals additionally contain similar school rankings, and California English Language Development Test (CELDT) scores for English Learners. Attendance rates and scores on the School Health Index will also be examined.

The petition does not indicate how other hallmark aspects of the *SCALE* goals will be measured, such as college awareness, a drive to succeed, personal commitment to leadership, motivation to continue as self-driven learners, global awareness, and a sense of human responsibility and ethics. These are laudable goals and these might be measured with surveys, interviews, projects that have a rubric tied to these criteria, and more. There is no evidence that the petitioner will attempt to measure this in a way that shows how well the school is doing in helping students to achieve these outcomes.

## **Conclusion**

*SCALE* Leadership Academy **does not** provide a reasonably comprehensive description of this element as required in Education Code 47605 (b) (5) (B).

## **Required Element C: Methods to Assess Pupil Progress**

Education Code 47605 (b) (5) (C) "The method by which pupil progress in meeting those pupil outcomes is to be measured."

### **Standard for Review**

Does *SCALE* Leadership Academy provide a reasonably comprehensive description of the required element?

#### **Reasonably Comprehensive**

- The methods that the petitioner proposes to use to measure student progress are outlined in Figures 24-27 (pps. 73-76). In addition to the assessment title, the content area is noted, the purpose of the data, and timeline on which the measures are administered. The lists contain state measures, published assessment tools, and in-house developed measures to gauge formative student progress.
- The petitioner is to be commended for using internal, close-to-the-classroom measures with the intent that they should be used to adjust teaching in light of student progress. The teacher created assessments are all included in Figure 27, "Other Assessments."
- Grades will be provided based on mastery of the California Content Standards, and will include analysis of in-class work, homework, projects, and assessments, as appropriate.

#### **Not Sufficient**

- Methods of assessment, even those which are interim, or even formative, are not described as mimicking the types of questions that will be on the state tests to be implemented in 2013-2014 which are so different in question-type than the current California Standard Tests (CSTs).
- To help students at their current school level, and then on their high school assessments, they need to have the types of questions that mirror the teaching strategies that will be used on the 2010 Common Core State Standards (CCSS).
- Special needs students will be graded based on any recommendations within their Individualized Education Plans.

### **Committee Comments**

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The methods that the petitioner proposes to use to measure student progress are outlined in Figures 24-27 (pps. 73-76). In addition to the assessment title, the content area is noted, the purpose of the data, and timeline on which the measures are administered. The lists contain state measures, published assessment tools, and in-house developed measures to gauge formative student progress. The petitioner is to be commended for using internal, close-to-the-classroom measures with the intent that they should be used to adjust teaching in light of student progress. The teacher created assessments are all included in Figure 27, "Other Assessments." Interim assessments will be created, scored and analyzed using EduSoft or a similar program. Methods of assessment, even those which are interim, or even formative, are not described as mimicking the types of questions that will be on the state tests to be implemented in 2014-2013 which are so different in question-type than the current CSTs. To help students at their current school level, and then on their high school assessments, the types of questions should mirror the teaching strategies that will be used on the 2010 Common Core State Standards (CCSS). These assessment strategies or question types will be practiced heavily by schools across the country in the 2013-2014

school year in preparation for the Smarter Balanced Assessment Consortium (SBAC) or Partnership for Assessment of Readiness for College and Careers (PARCC) assessments. They include: selected response, constructed response, performance tasks, and technology-enabled questions. On these kinds of items, even the selected response questions are often structured differently than multiple choice questions, requiring a different kind of test-taking strategy.

Data will be collected using Power School or Zoom! Data Source (a program of the Charter School Association data project). Data will be used to set school targets as well as to guide general instructional planning and individual student differentiated instruction. Some of this individual student support will be carried out during the Prep Plus program. An annual report will be provided that includes both demographic and achievement data. A School Accountability Report Card (SARC) will be completed annually.

To ensure student and family involvement with student learning the petitioner will provide student-teacher meetings after each interim assessment and reset goals. Interim assessment results will also be shared with parents. State test results will be reviewed with stakeholders during a summer session.

Grades will be provided based on mastery of the California Content Standards, and will include analysis of in-class work, homework, projects, and assessments, as appropriate. Special needs students will be graded based on any recommendations within their Individualized Education Plans.

## **Conclusion**

*SCALE* Leadership Academy **does not** provide a reasonably comprehensive description of this element as required in Education Code 47605 (b) (5) (C).



## **Required Element D: Governance Structure (Petition, pps 78-87)**

Education Code 47605 (b) (5) (D) “The governance structure of the school, including, but not limited to, the process to be followed by the school to ensure parental involvement.”

### **Standard for Review**

Does *SCALE* Leadership Academy provide a reasonably comprehensive description of the required element?

#### **Reasonably Comprehensive**

- *SCALE* Leadership Academy has incorporated as a California Nonprofit Public Benefit Corporation.
- The Petition contains legal affirmation statements.

#### **Not Sufficient**

- The petitioners do not appear to have a connection with the community they intend to serve.
- The Petition lacks evidence reflecting a seriousness of purpose necessary to ensure the school will become and remain a viable enterprise based on contradictory and confusing statements in the Petition and Bylaws.
- The Petition lacks evidence reflecting a seriousness of purpose necessary to ensure the school will become and remain a viable enterprise because the petitioners submitted unsigned Bylaws.
- *SCALE* Leadership Academy Bylaws list Pasadena as the location for Board of Director meetings, which is contrary to the Brown Act requirement that meetings occur within the jurisdiction of the school district (Rialto Unified School District).
- *SCALE* Leadership Academy’s Board of Directors do not post agendas on the school’s website at <http://www.scaleacademy.org>.
- The Petition and Bylaws contain contradictory, confusing, and insufficient conflict of interest compliance.
- The Petition and Bylaws contain confusing and insufficient liability and indemnity provisions.
- The Petition lacks evidence reflecting a seriousness of purpose necessary to ensure active and effective parental representation in the governance of *SCALE* Leadership Academy.

### **Committee Comments**

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The Petition’s narrative for Required Element D is located on pages 78-86. The Charter’s Articles of Incorporation, Bylaws, and Conflict of Interest Code are located on pages 161-180.

California Code of Regulations, Title 5, section 11967.5.1(f)(4) requires charter school petitions to include evidence that the governance structure reflects a seriousness of purpose necessary to ensure that: (1) the school will become and remain a viable enterprise; (2) there will be active and effective representation of interested parties, including, but not limited to parent/guardians; and (3) the educational program will be successful.

## **THE PETITION AND BYLAWS LACK EVIDENCE REFLECTING A SERIOUSNESS OF PURPOSE THAT THE SCHOOL WILL BECOME AND REMAIN A VIABLE ENTERPRISE**

### **Organizational Flaws**

Based on the information provided in the petition, none of the founding group members, with the possible exception of the lead petitioner, live or work within the boundaries of Rialto Unified School District. The Petition lacks evidence that the petitioners are connected to the community they seek to serve.

The Petition at page 80 states, "The Board shall have at least five (5) and no more than eleven (11) directors. In accordance with Education Code section 47604(b), the County Board of Education may appoint a representative to sit on the Board of Directors." The Bylaws, Article VII, Section 3, repeats this language. This arrangement is insufficient because it allows for the possibility of an even number of directors and deadlock. Neither the Petition nor the Bylaws require the Board of Directors to maintain an odd number of members.

The Articles of Incorporation, Article V, states: "This corporation shall be a membership corporation, with one class of membership. All members shall be voting members." (p. 161) The Bylaws, Article VI, Section 1, states: "This corporation shall have no voting members within the meaning of the Nonprofit Corporation Law." (p. 164)

The Petition's governance structure fails to contain signed Bylaws. Without signed Bylaws, it is impossible to evaluate if the Petition provides a reasonably comprehensive description of the governance structure.

### **Brown Act**

The Petition at page 3 states: "*SCALE* Leadership Academy will comply with the Brown Act." The Bylaws at Article VII, Sections 14 and 15, also promise to abide by the Brown Act.

Government Code section 54954 requires governing board meetings to occur within the boundaries of the territory over which the entity conducting the meetings exercises jurisdiction. *SCALE* Leadership Academy Bylaws at Article II, section 1, state that the corporation's principal office is in Pasadena. The Bylaws at Article VII, section 14, provides that Board of Directors meetings shall occur at the corporation's principal office. Holding meetings in the City of Pasadena for a school located within the Rialto Unified School District fails to satisfy the requirements of the Brown Act.

The Petition also submits confusing language regarding *SCALE* Leadership Academy's jurisdiction. The Petition at page 2 states that the school will locate within the boundaries of the Rialto Unified School District. The Bylaws at Article VII, section 20, states that a quorum of directors "shall participate in the teleconference meeting from locations within the boundaries of the school district in which the Charter School operates." The Bylaws establish a de facto jurisdiction within the Rialto Unified School District, which conflicts with its mandate to hold Board of Directors meetings in Pasadena.

Government Code section 54954.2(a)(1) states, in part: "The agenda...shall be posted in a location that is freely accessible to members of the public and on the local agency's Internet Web site, if the local agency has one." The nonprofit corporation's Bylaws promise to comply with the Brown Act and the nonprofit corporation is an active, ongoing entity. *SCALE* Leadership Academy's website at <http://www.scaleacademy.org/> contains no Board of Directors meeting agendas.

### **Conflicts of Interest**

The Petition at page 82 states: “The School has adopted a Conflict of Interest Code which complies with the Political Reform Act, Corporations Code Conflicts of Interest rules, and Government Code section 1090 which shall be updated with any charter school specific conflicts of interest laws or regulations.” This quote is footnoted to: “The Charter School has agreed to comply with Government Code section 1090 subject to any clear legal authority indicating that this section of the law is inapplicable to charter schools.” Considering that significant portions of the charter school community contest the applicability of conflicts of interest laws to charter schools, it is imperative that the Petition’s promise to comply with Government Code section 1090 is unequivocal. The Petition’s conditional and vague statement is insufficient.

The Petition and Bylaws also present conflicting and confusing language regarding Government Code section 1090. The Bylaws at Article IX, section 1, state: “The Corporation shall comply with Government Code Section 1090.” The Conflict of Interest Code, section I, states: “As the Charter School has also agreed in its charter to comply with Government Code Section 1090 (“Section 1090”), in addition to the Political Reform Act, this Code also conforms to the requirements of Section 1090.” Neither reference contains conditional language. It is unclear whether *SCALE* Leadership Academy will comply with Government Code section 1090.

The Petition at page 80 contains an organizational chart placing the School Director and Principal on equal hierarchical footing. The Conflict of Interest Code, Exhibit A, lists the School Director, but fails to list the Principal as a “designated employee” required to file a Statement of Economic Interest.

The Conflict of Interest Code, Exhibit A, also names a Business and Operations Manager as a “designated employee” required to file a Statement of Economic Interest. The Petition fails to mention a Business and Operations Manager and lacks a job description for the position.

### **Civil Liability and Indemnity of San Bernardino County Superintendent of Schools and Board of Education**

San Bernardino County Board of Education Rule 609, “Charter Conditions if Approved by County Board of Education,” requires broad indemnification:

“The charter must specify that the charter school shall at its own cost *defend, indemnify and hold harmless the charter authorizing entity, its Governing Board, officers and employees, and the County Superintendent of Schools (commonly referred to as the “County chartering authority”) and his/her officers and employees*, from any claim or demand of whatever nature, brought by any person, institution, or organization and arising in any manner out of the formation, operation and activities or omissions to act of the charter.

“The charter school, at its own cost, expense, and risk, shall agree in the charter and in a signed writing with all appropriate approval formalities observed, to defend any legal proceedings that may be brought against the *County chartering authority, its Governing Board and its officers and employees, and the County Superintendent of Schools and his/her officers and employees*, by any person, including any institution or organization, on any claim or demand of whatever nature arising out of the decisions and steps taken by the County chartering authority and/or its Governing Board to grant or participate in the granting of a charter, and shall satisfy any judgment that may be rendered against any of them. The County chartering authority’s Governing Board and the County Superintendent of Schools shall notify the charter school in writing of the receipt of any such claims or demands, and the charter school shall accept the claim or demand, and defend, indemnify and hold each of them harmless on same.” (Emphasis added.)



The Petition's civil liability and indemnification provisions contain significant inconsistencies and insufficient language. These provisions raise questions about the extent of protection from civil liability the petitioners intend to provide the chartering entity and its employees.

The Petition at page 85 states: "*SCALE* Leadership Academy will hold harmless and indemnify the County Board of Education from every liability, claim, or demand" including: (1) injuries to people or property sustained by *SCALE* Leadership Academy employees, or by any person, firm, or corporation employed directly or indirectly by *SCALE* Leadership Academy; (2) injuries to people or property caused by an act, neglect, default, or omission of *SCALE* Leadership Academy, its officers, employees, or agents; and (3) the furnishing or use of any copyrighted or un-copyrighted composition, or patented or unpatented invention. This language fails to hold harmless and indemnify: (1) the San Bernardino County Board of Education's officers and employees; (2) the San Bernardino County Superintendent of Schools; and (3) San Bernardino County Superintendent's officers and employees.

In contrast to its promise to indemnify the San Bernardino County Board of Education, the Petition at pages 85-86 states it will provide "Comprehensive Bodily Injury and Property Damage Liability for the combined single limit coverage of not less than \$5,000,000 per single occurrence. The County Board of Education will be named as the 'other named *insurers*.'" (Emphasis added.)

The Petition at page 85 states: "In accordance with its corporate bylaws, *SCALE* Leadership Academy, at its own expense and risk, will defend all legal proceedings on any such liability, claim, or demand that may be brought against *SCALE* Leadership Academy and/or the Board of Directors or the School's officers and employees." This language fails to defend: (1) the San Bernardino County Board of Education; (2) the San Bernardino County Board of Education's officers and employees; (3) the San Bernardino County Superintendent of Schools; and (4) San Bernardino County Superintendent's officers and employees.

The Petition at page 85 also states: "*SCALE* Leadership Academy will further indemnify and hold harmless the County Board of Education and the California Department of Education of any present or future liability for the School's actions." This language fails to hold harmless and indemnify: (1) the San Bernardino County Board of Education's officers and employees; (2) the San Bernardino County Superintendent of Schools; and (3) the San Bernardino County Superintendent's officers and employees.

The Petition at page 103 fails to indemnify the San Bernardino County Board of Education's officers and employees, the San Bernardino County Superintendent of Schools, and the San Bernardino County Superintendent's officers and employees regarding contractual liability resulting from third party contracts with its vendors, contractors, partners or sponsors.

#### **THE PETITION AND BYLAWS LACK EVIDENCE REFLECTING A SERIOUSNESS OF PURPOSE THAT ENSURES ACTIVE AND EFFECTIVE PARENTAL REPRESENTATION IN THE GOVERNANCE OF *SCALE* LEADERSHIP ACADEMY**

The Petition at page 14 states: "Parents and families will be expected to be active participants in the education of their student and the school community as a whole. To support this initiative, Parents will be required to serve a mandatory 20 hours of volunteer time per year in support of the school mission." This language relegates parents to passive volunteer positions instead of offering active and effective *representation* in the school's governance. It further creates the potential of disproportionately excluding families from admission and continuing enrollment based on their means or ability to comply with the volunteer requirements.

The Petition and Bylaws fail to ensure active and effective parental representation because *SCALE* Leadership Academy already chose its initial Board of Directors and no directors are parents. Further, the Bylaws, Article VII, Section 5, states that the Chairman of the Board of Directors will appoint a committee to choose candidates for election to the Board of Directors. It is unclear whether parent/guardians will have the ability to elect directors.

The Petition at page 81 states: “The Board *shall* seek to nominate and appoint members with experience in one or more of the following areas: education, government, law, business, public finance/accounting, fundraising, facilities, philanthropy, or public relations.” (Emphasis added.) Imposing these requirements on Board of Directors candidates inappropriately excludes parents from serving on the Board of Directors based on factors including means and education. This is particularly egregious given *SCALE* Leadership Academy’s repeated statements that its focus is to serve an at-risk community.

The Bylaws, Article VII, Section 3, requires all directors to: (1) have a college degree; (2) have education or nonprofit experience; and (3) have relevant professional experience (i.e. finance, education, law, business, facilities, real estate, or public relations). This language discriminates against parents based on their means and education.

The Petition at page 84 states: “Scale Leadership Academy will establish a Parent/Teacher Council (“PTC”) to facilitate communication among parents, teachers and the Board as well as to promote cultural and social activities within the school community.” Some of the PTC’s duties include reporting to the Board of Directors “as needed” and providing advice to the Board of Directors “as requested by the Board or deemed necessary by the PTC.” This advisory role fails to ensure active and effective *representation*.

*SCALE* Leadership Academy’s Bylaws at Article II, Section 1, states that the corporation’s principal office is in Pasadena. The Bylaws at Article VII, section 14, provides that Board of Directors meetings shall occur at the corporation’s principal office. Holding meetings in the City of Pasadena for a school located within the Rialto Unified School District creates an approximate 100-mile roundtrip to attend Board of Directors meetings. This effectively prevents parents from attending these meetings.

Nothing in the Petition or the Bylaws establishes a mechanism allowing parents to place items on the agenda. Neither the Petition nor the Bylaws guarantee public comment.

## Conclusion

*SCALE* Leadership Academy **does not** provide a reasonably comprehensive description of this element as required in Education Code 47605 (b) (5) (D).

## **Required Element E: Employee Qualifications**

Education Code 47605 (b) (5) (E) “The qualifications to be met by individuals to be employed by the school.”

### **Standard for Review**

Does *SCALE* Leadership Academy provide a reasonably comprehensive description of the required element?

#### **Reasonably Comprehensive**

- The petition describes general employee qualifications and includes specific job descriptions for Director, Principal, Teachers, Office Manager, Assistant Office Manager, and Instructional Aides, beginning on page 89. General employee qualifications and job descriptions are complete. Specifically, the teacher job description acknowledges California credentialing and ESEA (NCLB) requirements. All employees will be at-will employees.

#### **Not Sufficient**

- There are an insufficient number of teachers who have signed as “meaningfully interested in teaching at *SCALE* Leadership Academy” to meet its stated goals of serving students in grades 6-8 in all core academic and elective areas of study.
- Incomplete credentialing information was provided for interested *SCALE* teaching staff. No copies of Commission on Teacher Credentialing (CTC) credentials were provided. Searching by name only on CTC’s website did not produce a credential for one interested teacher, making it impossible to verify qualifications. One teacher’s preliminary credential has expired.
- Authorizations-English Language Learner authorization is not indicated as a requirement in this section.
- Teaching Credentials- It is unclear as to the type and or number of teaching credentials or authorizations may be needed to teach the courses specified.

## **Committee Comments**

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General employee qualification information contained within the *SCALE* Leadership Academy petition are complete, including acknowledgement of appropriate California credentials and meeting federal qualifications required by ESEA (NCLB). However, there an insufficient number of “meaningfully interested” teachers and no credential documentation was provided.

There are five individuals who have signed as “meaningfully interested” in teaching at *SCALE* Academy, including the petitioner, Lawrence Wynder. Interested teacher, Theodore Brockman, does not currently have a valid California credential. His Preliminary Single Subject credential in Physical Education expired on 6/1/2012. This type of credential authorizes instruction in Physical Education exclusively – no core academic subject areas. In order to obtain the clear credential, the preliminary credential holder must complete a teacher preparation program and be recommended by the program to CTC.

Interested teacher, Alake Watson’s multiple subjects credential cannot be confirmed through the “public search” option on CTC’s website. Secured search requires the individual’s date of birth and Social Security number.



Interested teachers, Mark DelPino and Sara Nielsen, hold clear and lifetime Multiple Subjects credentials, respectively. Both teachers are authorized to provide SDAIE or ELD services to English learners with CLAD-equivalent authorizations. These teachers are eligible to serve the targeted student population of grades 6-8 in either a self-contained or a core setting pursuant to EC 44258.1.

Interested teacher/petitioner Lawrence Wynder, currently holds preliminary teaching and administrative credentials. His Single Subject teaching credential is in Social Science with CLAD-equivalent authorization to serve English learners.

### **Authorizations**

Although newer teaching credentials embed English Language Learner authorization(s) into the credential based on coursework taken through an Institution of Higher Education there is no mention of teachers needing to meet this requirement. The California Education Code (*EC*) requires individuals to hold the appropriate authorization prior to providing instructional services, including specified EL services. The pertinent statutes include: *EC* section 44001, *EC* Section 44830(a), *EC* section 44831, and particularly *EC* section 44253.1. In addition, there is no mention of the requirement if teachers do not have the authorization within the credential.

### **Federal Requirements**

Although the requirements as defined under The No Child Left Behind Act remain, the identification of the provisions are now identified under the Elementary and Secondary Education Act (ESEA).

### **Terms and Conditions of Employment**

*SCALE* employees will be at-will employees.

### **Teaching Credentials**

It is unclear as to the type and or number of teaching credentials or authorizations may be needed to teach the courses specified. For example, if teachers are expected to teach four courses at eighth (8<sup>th</sup>) grade then they will be required to hold the appropriate credentials and/or authorizations to teach each subject matter.

### **Conclusion**

*SCALE* Leadership Academy **does not** provide a reasonably comprehensive description of this element as required in Education Code 47605 (b) (5) (E).

## **Required Element F: Health and Safety Procedures**

Education Code 47605 (b) (5) (F) “The procedures that the school will follow to ensure the health and safety of pupils and staff. These procedures shall include the requirement that each employee of the school furnish the school with a criminal record summary as described in Section 44237.”

### **Standard for Review**

Does *SCALE*. Leadership Academy provide a reasonably comprehensive description of the required element?

#### **Not Sufficient**

- Tuberculosis Tests. There is lack of clarity of required TB tests for volunteers
- Medical Records. There is a lack of specificity on maintaining and meeting legal requirements for medical information.

### **Committee Comments**

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Although there is mention that employees are required to meet legal requirements for passing the TB test, there is no mention of how this rule will apply toward volunteers.

#### **Medical Records**

Medical files and storage are not indicated in this section. There is no mention of *SCALE* meeting the legal requirements as defined under the Health Insurance Portability & Accountability Act (HIPPA).

### **Conclusion**

*SCALE* Leadership Academy **does not** provide a reasonably comprehensive description of this element as required in Education Code 47605 (b) (5) (F).

## Required Element G: Reflective Racial and Ethnic Balance

Education Code 47605 (b) (5) (G) “The means by which the school will achieve a racial and ethnic balance among its pupils that is reflective of the general population residing within the territorial jurisdiction of the school district to which the charter petition is submitted.”

### Standard for Review

Does *SCALE* Leadership Academy provide a reasonably comprehensive description of the required element?

#### Reasonably Comprehensive

- The petition lists general strategies to achieve racial and ethnic balance that is reflective of the community for initial enrollment.
- Secondary strategies policies, procedures, marketing, budgets, etc. are listed in an attempt to ensure an ethnic balance reflective of the community at the school site.

#### Not Sufficient

- The petition does not list methods of transporting students to and from school or means available to assist families that desire to attend the charter but are unable to afford transportation which may affect the demographics/racial and ethnic balance of the school due to the location of the potential school site.
- Methods are not indicated to transmit the marketing information/strategies to the large English Language Learner population that currently exists in the local school district boundaries and surrounding boundaries as well.

### Committee Comments

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Information on the means to achieve a reflective racial and ethnic balance can be found on pages 104-105 of the charter petition. The petition presents an attainable strategy and plan that recognizes the need to enroll and attract students but not a specific means of reflecting an ethnic and racial balance that is present in the proposed locale of the school site.

*SCALE* does not list methods of transporting students to and from the charter school or means available to assist families that desire to attend the charter school but are unable to afford transportation. While not expressly required by law, this issue may be an obstacle to reaching an ethnic and racial balance goals based upon the desired location of the school and nearby ethnic demographics.

### Conclusion

*SCALE* Leadership Academy **does not** provide a reasonably comprehensive description of this element as required in Education Code 47605 (b) (5) (G).



## **Required Element H: Applicable Admission Requirements**

Education Code 47605 (b) (5) (H) “Admission requirements, if applicable.”

### **Standard for Review**

Does *SCALE* Leadership Academy provide a reasonably comprehensive description of the required element?

#### **Reasonably Comprehensive**

- The petition provides a reasonably comprehensive description of its public random lottery process and open enrollment procedures for admission to the upcoming school year.

#### **Not Sufficient**

- Enrollment procedures for special needs or second language learners are not mentioned in the petition.

## **Committee Comments**

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Information relative to this section can be found on pages 106-109 of the petition.

The petition lists applicable admission requirements and included a detailed description of the lottery process for admission for reaching the desired student targeted audience.

Should the San Bernardino County Board of Education approve this charter appeal, *SCALE* will need to clarify its enrollment procedures for special needs students in a memorandum of understanding.

## **Conclusion**

*SCALE* Leadership Academy **does** provide a reasonably comprehensive description of this element as required in Education Code 47605 (b) (5) (H).

## Required Element I: Financial Audits

Education Code 47605 (b) (5) (I) “The manner in which annual, independent financial audits shall be conducted, which shall employ generally accepted accounting principles, and the manner in which audit exceptions and deficiencies shall be resolved to the satisfaction of the chartering authority.”

### Standard for Review

Does *SCALE* Leadership Academy provide a reasonably comprehensive description of the required element?

#### Not Sufficient

- The application submitted by *SCALE* references an annual audit on page 111 of the petition; however, the petition is limited to identifying that an independent auditor will be selected through a request for proposal format, will have a CPA and experience working with educational institutions and will be approved by the State Controller on its published list as an education audit provider.
- The petition fails to identify that the independent auditor will employ generally accepted accounting principles.
- Budget assumptions understate expenses and likely overstate revenues.
- Budget assumptions do not provide sufficient detail of the likely costs of anticipated borrowing.
- The school lunch program is not budgeted.

### Committee Comments

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The budget for the first five fiscal years is presented on pages 181 – 196. Based on Committee review of the budget presented, there are concerns which may impact the fiscal solvency and the likelihood that the *SCALE* can successfully implement the program set forth in the petition.

*SCALE* is projecting enrollment of 125 students during the first year of operation for implementation of Grade 6. The charter petition outlines a plan of adding one grade level each subsequent year for grades 7 and 8 with an additional 125 students per grade. The petition does not contain a sample of interested parents or any other documentation sufficient to determine if the enrollment of 125 per grade level can be obtained in the first and subsequent years. Based on the 2010-11 enrollment of grades 6-8 for Rialto Unified School District, the charter’s projected enrollment is approximately 6% of the district’s enrollment. Enrollment is critical to the fiscal solvency of the charter. If enrollment does not materialize as projected, this will affect the charter’s ability to maintain a positive cash and/or fund balance.

The petitioner has received preliminary approval for the Public Charter School Grant of \$575,000 by the California Department of Education that may be used to offset expenses involved in the opening of the charter school. The approval is contingent on the charter obtaining an approved petition. This grant requires an enrollment of at least 50 students over the course of the three year program, adequate yearly progress must be made and the charter must plan to serve students who reside in the attendance area of a traditional public school that is identified to be in Program Improvement Years 3, 4 or 5 under the No Child Left Behind and has an API statewide rank of 1 or 2. Continued disbursement of funds is also

contingent on the completion of benchmark requirements, including the submission of various documents. Although not a financial concern at this time, the charter will need to ensure that both the enrollment and program requirements are monitored to ensure funding over the next few years.

The attendance projections assume Average Daily Attendance (ADA) to be earned at approximately 95% of enrollment. Rialto Unified School District's 2010-11 ADA to Enrollment ratio for grades 6-8 was approximately 93%. The charter's projections are 2% higher, which could materially affect funding and cash flow. The funding rates used are slightly lower than the projections by School Services of California at the time *SCALE*'s budget was drafted (i.e. 2012-13 Adopted State Budget – omitting the assumption that Prop 30 fails). However, if the ADA is overestimated, the charter may not be able to maintain fiscal solvency.

Additionally, the budget reflects Title One funding of approximately \$21,730 to \$69,180 over the course of five years. Due to the unknown future of the Federal budget, Title One may be drastically reduced in the near future. Also, Title One is dependent on the State Board of Education's approval of the Charter's Local Educational Agency (LEA) plan. If the plan has not yet been developed, this may hinder the efforts of the Charter to obtain Title One funding in the first year of operations.

Page 140 of the petition indicates that *SCALE* seeks to locate the school on a middle or elementary school campus and shall seek Proposition 39 funding from the District for this purpose. As a contingency, they identified several possible sites and quoted .49 to .86 per square foot cost, with *SCALE* requiring 10,000 to 20,000 square feet, for a total of \$125,000 for Year 1. That works out to 80-160 square feet per student. Page 187 indicates the plan assumes that the school will receive reimbursement through the SB740 rent reimbursement program. They acknowledge that receipt of Prop 39 funds would render them ineligible for SB740 funding. The petition provided neither an offer nor a documented agreement from Rialto Unified School District to provide space and no tentative lease agreement for other space. The budget included SB740 funding and rent at \$1.70 per square foot triple net lease at 50 square feet per student. Page 140 facility plans don't reconcile with page 187. The facility plan appears to be in the very early development stages. The amount of space needed is not clear and available space for Years 1 through 3 is not clearly identified. Additionally, a phased implementation of 125 students per year for three years brings with it the challenge securing enough space for growth without paying for full implementation space needs beginning in year one. That issue is not addressed. Until a more finalized facility plan is provided, it is not possible to determine the accuracy or sufficiency of the facility revenue and expense budgets and could jeopardize the Charter's successful implementation and solvency.

According to the petition on page 23, the charter intends to provide hot lunches every day for the students and apply for Federal Child Nutrition funding as the school will have a large population of eligible free and reduced students. The petition also indicates that these services will be contracted to an outside provider on page 101, but the budget does not appear to include a proposed allowance for a contracted service in the budget. Additionally, the budget does not appear to include federal revenues for the National School Lunch program. Both the revenue and expenses for school lunches need to be budgeted. Although it is possible that Federal Child Nutrition funding could support 100% of the expenditures of the school lunch program, there is insufficient information to ascertain whether this is the case.

The charter intends to provide approximately 25 laptop computers and 2-3 desktops per classroom. The budget may be slightly understated in this area. The laptops are included in the start-up budget, but the desktops appear to not have been included in the budget.

Substitute costs are projected at 1.6% of teacher salaries. This estimate assumes a teacher will be absent approximately 6 days a year. This estimate may be unrealistic and understated.



Unemployment insurance (UI) rates of 1.1% are currently in place for FY 12/13 and are expected to be reduced to .05% for FY 13/14. The certified rate for FY 13/14 is required to be provided to employers by March 31. The Charter budgeted UI at 3% of the first \$7,000 of earnings. At the uncertified UI rate of .5%, UI should be budgeted at \$1,395 for Year 1. At *SCALE*'s budgeted rate of 1% for the first \$7,000 of earnings, they would have included \$696.80 in their budget. Even at the anticipated reduced rate of .5%, *SCALE*'s budget for UI is understated.

The cash flow is presented on pages 194-196. Revenues are summarized in three lines as State, Federal and Loans. This summarized presentation provides insufficient detail to validate the accuracy of the cash flow for the various revenue sources. On page 187, the petition reads, "The timing of funds is intended to reflect anticipated changes to the program, with the exception of Year 1, fourth quarter funds are moved up to the third quarter for ongoing personnel salaries to cover expenses in the short term until sufficient state operation funds are received. These funds would be repaid at the end of the first operational year or as soon as sufficient state or local funds allocated for that purpose become available, whichever is sooner. This repayment is not reflected in cash flow so as to keep the revenue sources and repayment comprehensible for the reader,...". Cash flows must include enough detail to validate data and must reflect all cash transactions in the period they are expected. A loan of \$250,000 is recorded as revenue in the Year 1 cash flow. Under Generally Accepted Accounting Principles, loans and principal payments are not budgeted revenues or expenditures. Revenues and expenditures on the cash flow must reconcile to the budget. The loan should be reported in a separate balance sheet section along with the principal portion of the loan payments. Cash deficits exist in numerous months in Years 2 and 3. The petition does not indicate how these negative balances will be mitigated. Although charter schools were recently granted the ability to issue Tax Revenue Anticipation Notes (TRANS) and may be able to obtain other temporary loans, these are costly and if not obtained can lead to the insolvency of the charter.

*SCALE* Leadership Academy Charter School does not provide a reasonably comprehensive business plan that adequately addresses the following items:

- A contingency plan if enrollment and/or ADA does not materialize,
- A reasonable description outlining how the enrollment and/or ADA amounts were determined,
- No budget for their school lunch program,
- Facility requirements and associated funding and expense budgets,
- Some understated expenses for technology, unemployment insurance and substitute costs
- The cash flow presented contains projected negative cash balances in year 2 that continue throughout year 3. Additionally, the cash flow does not include sufficient detail to validate its accuracy. The petition fails to adequately address how projected negative cash balances will be mitigated.

## **Facilities**

*SCALE* has underestimated their facility costs. The lease rates quoted are in the range of modified gross leases for industrial space with few existing tenant improvements. (A modified gross lease requires the tenant pay for all utilities with the exception of water and trash.) There are no budget provisions for utilities, telephones, data, and security monitoring which would average approximately \$.50 per square foot per month or \$60,000 per year for a 10,000 square foot building. No funds are budgeted for tenant improvements needed to make the space suitable for a school. At a modest estimate of \$40 per square foot for tenant improvements needed to create a school setting the one-time cost for tenant improvements for a 10,000 square foot building would approximate \$400,000.

## **Conclusion**

*SCALE* Leadership Academy **does not** provide a reasonably comprehensive description of this element as required in Education Code 47605 (b) (5) (I).

## Required Element J: Student Suspensions and Expulsions

Education Code 47605 (b) (5) (J) “The procedures by which pupils can be suspended or expelled.”

### Standard for Review

Does *SCALE* Leadership Academy provide a reasonably comprehensive description of the required element?

#### Reasonably Comprehensive

- The petition is generally consistent with current Education Code and due process procedures.

#### Not Sufficient

- *SCALE* Academy is not fully compliant with California Education Code 49079.

### Committee Comments

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Charter Schools are required to describe their suspension and expulsion procedures. Information relative to this section may be found on pages 113-128 of the petition. The petition somewhat mirrors California Education Code relative to ensuring a student’s due process rights and procedures in the area of suspension and expulsion but fails to include recent legislation relative to student due process and other means of correction.

The petition does not authorize the San Bernardino County Board of Education to hear appeals of student expulsions from *SCALE* charter school nor any other appeals body.

Note: The California Education Code is silent in this matter but is a preference of the County Board of Education to hear expulsion appeals.

California Education Code 49079 and 48900.5 needs to be fully compliant in the preventive discipline process. Although not listed in the petition, portions of this section (notification to teachers of disciplinary action against students) need to be fully implemented.

### Conclusion

*SCALE* Leadership Academy **does not** provide a reasonably comprehensive description of this element as required in Education Code 47605 (b) (5) (J).

## Required Element K: Retirement Systems

Education Code 47605 (b) (5) (K) “The manner by which staff members of the charter schools will be covered by the State Teachers’ Retirement System, the Public Employees’ Retirement System, or federal social security.”

### Standard for Review

Does *SCALE* Leadership Academy provide a reasonably comprehensive description of the required element?

#### Reasonably Comprehensive

- *SCALE* Leadership Academy clearly states its intentions to participate in the California State Teachers Retirement System (CalSTRS).

#### Not Sufficient

- The charter school petition indicates that retirement reporting will be contracted out to a qualified service provider; however, CalSTRS reporting must be performed by the County Office of Education.
- In addition, the petition does not acknowledge the recent IRS proposal that may disallow certificated staff at charter schools from participating in CalSTRS. It does not address any comparable alternatives to the CalSTRS retirement system should the proposal come to fruition.
- The charter school petition is not clear on retirement coverage for classified employees. Although the petition mentions “PERS, PARS and Medicare or Social Security, as appropriate”, it is clear that the petitioners do not understand the mandatory nature of Social Security as it relates to CalPERS, nor does it appear they have budgeted sufficient funds to cover both CalPERS and Social Security.

### Committee Comments

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Required Element K: Retirement Systems is located on page 129 of the *SCALE* Leadership Academy Charter School Petition.

By law, California State Teachers Retirement System (CalSTRS) reporting must be performed by the County Office of Education. This will require that a written agreement be executed between SBCSS and *SCALE* Leadership Academy delineating the fee structure, the procedures and protocols necessary to meet reporting requirements, mandatory timelines, etc. These agreements take time to negotiate, execute, and implement; thus ample time should be allowed for that purpose. The charter petition does not include a proposed MOU for this purpose.

### Conclusion

*SCALE* Leadership Academy **does not** provide a reasonably comprehensive description of this element as required in Education Code 47605 (b) (5) (K).



### **Required Element L: Attendance Alternatives**

Education Code 47605 (b) (5) (L) “The public school attendance alternatives for pupils residing within the school district who choose not to attend charter schools.”

#### **Standard for Review**

Does *SCALE* Leadership Academy provide a reasonably comprehensive description of the required element?

#### **Reasonably Comprehensive**

- The petition states that *SCALE* Charter School is a charter school of choice and as such, no student may be required to attend.

#### **Not Sufficient**

- The petition fails to notify parents of other alternatives other than the right of admission to public school.
- The petition does not offer solutions or procedures for students who exhibit poor attendance or other problems related to school attendance.
- Matriculation procedures and assistance to return to the district of residence are not addressed in the petition in accordance with legislation effective January 1, 2006.

### **Committee Comments**

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Limited Information relative to this section may be found on pages 131 of the charter school petition.

### **Conclusion**

*SCALE* Leadership Academy **does not** provide a reasonably comprehensive description of this element as required in Education Code 47605 (b) (5) (L).

### **Required Element M: Return Rights of District Employees**

Education Code 47605 (b) (5) (M) “A description of the rights of any employee of the school district upon leaving the employment of the school district to work in a charter school, and of any rights of return to the school district after employment at a charter school.”

#### **Standard for Review**

Does *SCALE* Leadership Academy provide a reasonably comprehensive description of the required element?

#### **Reasonably Comprehensive**

- This section is reasonably comprehensive as identified in the petition regarding return rights of employees.

#### **Committee Comments**

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This section is reasonably comprehensive.

#### **Conclusion**

*SCALE* Leadership Academy **does** provide a reasonably comprehensive description of this element as required in Education Code 47605 (b) (5) (M).

## Required Element N: Dispute Resolution

Education Code 47605 (b) (5) (N) “The procedures to be followed by the charter school and the entity granting the charter to resolve disputes relating to provisions of the charter.”

### Standard for Review

Does *SCALE* Leadership Academy provide a reasonably comprehensive description of the required element?

#### Reasonably Comprehensive

- The Petition contains comprehensive procedures for instances where the San Bernardino County Board of Education determines a violation of law or the charter.

#### Not Sufficient

- The procedures for disputes raised by *SCALE* Leadership Academy with the San Bernardino County Board of Education are insufficient, unclear and not reasonably calculated to resolve disputes.

## Committee Comments

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The Petition’s narrative regarding Required Element N is found on pages 133-135.

The Petition contains a reasonably comprehensive set of procedures to resolve disputes when the San Bernardino County Superintendent of Schools determines a violation of law or the charter.

The Petition at page 135 fails to contain reasonably comprehensive procedures to resolve disputes raised by *SCALE* Leadership Academy against the San Bernardino County Superintendent of Schools. The Petition states:

“In the event of a dispute raised by the charter school against the County Superintendent over the terms of the charter, the charter school shall put the dispute in writing to the Superintendent or designees, and the County Superintendent, or Designee shall meet with the Principal and President of the Charter School to seek resolution within two weeks of receiving the written complaint. After this meeting if resolution is not reached, both parties are free to pursue any other legal remedy available. However, mediation may be commenced with the agreement of both the County Superintendent and the Charter School, with the costs of the mediator to be split by both parties.”

This procedure for resolving disputes initiated by the charter school is insufficient, unclear and not calculated to *resolve* disputes. At p. 134, paragraph 5, the petition states, “the parties will proceed to step 3.” However, the petition does not identify a “Step 3.” At page 134, paragraph 6, the petition states “... the parties will proceed to Step 4.” However, the petition fails to identify a “Step 4.”

## Conclusion

*SCALE* Leadership Academy **does not** provide a reasonably comprehensive description of this element as required in Education Code 47605 (b) (5) (N).

### **Required Element O: Status of Charter as Employer**

Education Code 47605 (b) (5) (O) “A declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school for the purposes of Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code.”

### **Standard for Review**

Does *SCALE* Leadership Academy provide a reasonably comprehensive description of the required element?

#### **Reasonably Comprehensive**

- This section is reasonably comprehensive as it identifies *SCALE* as the exclusive public employer of record.

### **Conclusion**

*SCALE* Leadership Academy **does** provide a reasonably comprehensive description of this element as required in Education Code 47605 (b) (5) (O).



## **Required Element P: Charter School Closing Procedures**

Education Code 47605 (b) (5) (P) “A description of the procedures to be used if the charter school closes. The procedures shall ensure a final audit of the school to determine the disposition of all assets and liabilities of the charter school, including plans for disposing of any net assets and for the maintenance and transfer of pupil records.”

### **Charter School Closure Requirements and Recommendations** (California Department of Education, Revised 08/2009)

The following provides guidance on charter school closures, including the handling of:

- Documentation and notification of the closure
- Record transfer and retention
- Student transfers
- Financial closeout

A charter school may close voluntarily, through non-renewal, or through revocation. The procedures for charter school closure are guided by California *Education Code* sections 47604.32, 47605, 47605.6, and 47607 as well as *California Code of Regulations*, Title 5 (5 CCR), sections 11962 and 11962.1. California law requires that closure procedures are stated through an agreement between the authorizing entity and charter school before the charter school begins operation. These procedures must designate a responsible entity to conduct closure activities and identify how these activities will be funded.

## **Standard for Review**

Does *SCALE* Leadership Academy provide a reasonably comprehensive description of the required element?

### **Reasonably Comprehensive**

- The Petition’s procedures for financial closeout are reasonably comprehensive.
- The Petition’s procedures for closure notification and student/personnel file maintenance are reasonably comprehensive.

### **Not Sufficient**

- The Petition fails to designate a responsible entity to conduct closure-related activities.

## **Committee Comments**

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### **Documentation of Closure Action**

The revocation or non-renewal of a charter school must be documented by an official action of the authorizing entity. Notice of a charter school’s closure for any reason must be provided by the authorizing entity to the California Department of Education (CDE). In addition, the charter school must send notice of its closure to:

- Parents or guardians of students
- The authorizing entity
- The county office of education (if the county board of education is not the authorizing entity)
- The special education local plan area in which the school participates
- The retirement systems in which the school’s employees participate
- The CDE

Notice must be received by the CDE within ten calendar days of any official action taken by the chartering authority. Notification of all the parties above must include at least the following:

- The effective date of the closure
- The name(s) of and contact information for the person(s) handling inquiries regarding the closure
- The students' school districts of residence
- How parents or guardians may obtain copies of student records, including specific information on completed courses and credits that meet graduation requirements

In addition to the four required items above, notification to the CDE must also include:

- A description of the circumstances of the closure
- The location of student and personnel records

In addition to the four required items above, notification to parents, guardians, and students should also include:

- Information on how to transfer the student to an appropriate school
- A certified packet of student information that may include grade reports, discipline records, immunization records, and any other appropriate information
- Information on student completion of college entrance requirements for all high school students affected by the closure

The charter school or authorizing entity should announce the closure to any school districts that may be responsible for providing education services to the former students of the charter school. These districts can then assist in facilitating student transfers. Charter school closures should occur at the end of an academic year if it is feasible to maintain a legally compliant program until then. If a conversion charter school is reverting to non-charter status, notification of this change should be made to all parties listed in this section.

#### **School and Student Records Retention and Transfer**

Closure procedures included in the charter must include the following plans for the transfer and maintenance of school and student records:

- Transfer and maintenance of personnel records in accordance with applicable law
- Provision of a list of students in each grade level and the classes they have completed to the entity responsible for conducting the closure
- Provision of the students' districts of residence to the entity responsible for conducting the closure
- Transfer and maintenance of all student records, state assessment results, and any special education records to the custody of the entity responsible for conducting the closure
- Transfer and maintenance of records or assessment results required to be transferred to a different entity are excluded from requirement (4) above

Submission of personnel records must include any employee records the charter school has. These include, but are not limited to, records related to performance and grievance.

The charter school and the authorizing entity should establish a process for student record transfer to the students' home district or other school to which the student will transfer. The charter school and/or authorizing entity should assist parents in student transfers. The authorizing entity and the charter school should agree to a plan allowing the authorizing entity to accept charter school records in the event the charter school is unable to maintain them. Provisions for the authorizing entity to maintain all school records, including financial and attendance records, should reflect the timelines stated in 5 CCR, sections 16023-16026.

### **Financial Close-Out**

Charter school closure procedures must ensure completion of an independent final audit within six months after the closure of the school that includes:

- An accounting of all financial assets. These may include cash and accounts receivable and an inventory of property, equipment, and other items of material value.
- An accounting of all liabilities. These may include accounts payable or reduction in apportionments due to loans, unpaid staff compensation, audit findings, or other investigations.
- An assessment of the disposition of any restricted funds received by or due to the charter school.

This audit may serve as the school's annual audit.

Charter school closure procedures must include a plan for completion and filing of any annual reports required. This includes:

- Preliminary budgets
- Interim financial reports
- Second interim financial reports
- Final unaudited reports

These reports must be submitted to the CDE and the authorizing entity in the form required. If the charter school chooses to submit this information before the forms and software are available for the fiscal year, alternative forms can be used if they are approved in advance by the CDE. These reports should be submitted as soon as possible after the closure action, but no later than the required deadline for reporting for the fiscal year.

For apportionment of categorical programs, the CDE will count the prior year average daily attendance (ADA) or enrollment data of the closed charter school with the data of the authorizing entity. This practice will occur in the first year after the closure and will continue until CDE data collection processes reflect ADA or enrollment adjustments for all affected LEAs due to the charter closure.

### **Disposition of Liabilities and Assets**

The closeout audit must determine the disposition of all liabilities of the charter school. Charter school closure procedures must also ensure disposal of any net assets remaining after all liabilities of the charter school have been paid or otherwise addressed. Such disposal includes, but is not limited to:

- The return of any donated materials and property according to any conditions set when the donations were accepted.
- The return of any grant and restricted categorical funds to their source according to the terms of the grant or state and federal law.
- The submission of final expenditure reports for any entitlement grants and the filing of Final Expenditure Reports and Final Performance Reports, as appropriate.

Net assets of the charter school may be transferred to the authorizing entity. However, net assets may be transferred to another public agency such as another public charter school if stated in the corporation's bylaws or through an agreement between the authorizing entity and the charter school.

If the charter school is a nonprofit corporation and the corporation does not have any other functions than operation of the charter school, the corporation should be dissolved according to its bylaws. The corporation's bylaws should address how assets are to be distributed at the closure of the corporation.

### **Analysis**

The Petition's narrative regarding Required Element P is found on pages 137-139.

While *SCALE* Leadership Academy's closure procedures attempt to meet the requirements of this element, they fail to comply with California Code of Regulations, Title 5, section 11962(a) because they lack designation of a responsible entity to conduct closure-related activities. The Petition at page 137

states: "Closure of the Charter School will be documented by official action of the Board of Directors...." The official action will also identify an entity and person or persons responsible for closure-related activities." This language is noncompliant. It promises to designate a responsible entity at the time the charter school decides to close. The law requires that the charter petition designate the responsible entity.

## **Conclusion**

*SCALE* Leadership Academy **does not** provide a reasonably comprehensive description of this element as required in Education Code 47605 (b) (5) (P).



## **SBCSS Charter Advisory Committee Findings**

### **1. EDUCATIONAL PROGRAM**

Education Code Section 47605(b)(1) “The charter school presents an unsound educational program for the pupils to be enrolled in the charter school.”

#### **Committee Comments**

*SCALE* is proposing to work with begins with sixth graders and would add a new grade up to 8th grade each year, unless there are enough 7th grade applicants the first year to warrant a class of 7th graders in addition to the 125 sixth graders (pg. 16).

There are six key elements that *SCALE* will provide that will ensure that learning occurs in the best way that it can (pg. 17). These include: 1) quality instruction; 2) research-based instructional strategies; 3) high expectations; 4) summative and formative data-driven decision making; 5) administrative and teacher leadership; and 6) professional development.

In regard to specific instructional methods and strategies, the petitioner indicates that *SCALE* will use a standards-based curriculum. It does not cite the standards adopted in August 2010, however, but the standards adopted by the California Department of Education in 2001 (pps. 24-26). The new standards are dramatically different. Students will not be prepared to compete with others who are using the 2010 Common Core State Standards, and as they leave middle school, will not be prepared to enter comprehensive high school programs that are using them.

An advisory curriculum and an Individual Learning Plan will be developed for each student. The sample ILP shows an example focused almost exclusively on knowledge and comprehension levels, and some application of Bloom’s Taxonomy. This document should infuse higher levels of thinking, even at the earliest grades, to accommodate current expectations of student achievement.

In regard to instructional materials, a combination of current instructional texts will be used in conjunction with several academic software programs that may be used in class, after school, or at home (pgs. 36-37). Supplemental Materials need to be identified, or other strategies for identifying appropriate instructional topics and strategies would need to be used to provide adequate instruction in relation to the CCSS.

The Petitioner proposes a model for English Learner support that includes diagnostic testing, regular assessment, plans in the ILP and in case of RtI designations and instructional strategies and professional development for teachers that support a full inclusion model. It is wide-ranging (pps. 45-51). However, while it includes ELD standards and alludes to ELD supported instruction, there needs to be required time only for directed English Language Development for students, during the school day, so that students may take advantage of the remainder of their day with maximum benefit.

It appears that the Charter is depending on the district for all special education services, including special education assessments. The Charter administrators / teachers are not required to have a special education credential, only a working knowledge of special education. There is no mention of a ‘continuum of special education services to meet the needs of mild to severe handicapping conditions. There is no mention of how they will accommodate students that require a Special Day Class setting per IEP requirement. Will the district be required to staff this classroom? It appears they are depending on the district to accommodate the needs of severely disabled students, as there was no mention of how they would serve medically fragile students and the nursing requirements: g-tube feeding, trach suctioning, and

lifting equipment to accommodate movement and toileting needs. There was no mention of students with Low Incidence needs such as Hearing Impaired, Orthopedically Impaired, and/or Visually Impaired. Is the district responsible to provide these services? Will the classrooms and school site have the necessary ADA accommodations?

### **Committee Finding**

*SCALE* Leadership Academy **does not** provide a reasonably sound educational plan that adequately addresses the continuum of student needs for the grade levels it wishes to offer.

## 2. FISCAL MANAGEMENT

Education Code Section 47605(b)(2) “The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.”

### Committee Comments

The budget for the first five fiscal years is presented on pages 181 – 196. Based on Committee review of the budget presented, there are concerns which may impact the fiscal solvency and the likelihood that the *SCALE* can successfully implement the program set forth in the petition.

*SCALE* is projecting enrollment of 125 students during the first year of operation for implementation of Grade 6. The charter petition outlines a plan of adding one grade level each subsequent year for grades 7 and 8 with an additional 125 students per grade. The petition does not contain a sample of interested parents or any other documentation sufficient to determine if the enrollment of 125 per grade level can be obtained in the first and subsequent years. Based on the 2010-11 enrollment of grades 6-8 for Rialto Unified School District, the charter’s projected enrollment is approximately 6% of the district’s enrollment. Enrollment is critical to the fiscal solvency of the charter. If enrollment does not materialize as projected, this may affect the charter’s ability to maintain a positive cash and/or fund balance.

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Unemployment insurance (UI) rates of 1.1% are currently in place for FY 12/13 and are expected to be reduced to .05% for FY 13/14. The certified rate for FY 13/14 is required to be provided to employers by March 31. The Charter budgeted UI at 3% of the first \$7,000 of earnings. At the uncertified UI rate of .5%, UI should be budgeted at \$1,395 for Year 1. At *SCALE*’s budgeted rate of 1% for the first \$7,000 of earnings, they would have included \$696.80 in their budget. Even at the anticipated reduced rate of .5%, *SCALE*’s budget for UI is understated.

The cash flow is presented on pages 194-196. Revenues are summarized in three lines as State, Federal and Loans. This summarized presentation provides insufficient detail to validate the accuracy of the cash flow for the various revenue sources. On page 187, the petition reads, “The timing of funds is intended to reflect anticipated changes to the program, with the exception of Year 1, fourth quarter funds are moved

up to the third quarter for ongoing personnel salaries to cover expenses in the short term until sufficient state operation funds are received. These funds would be repaid at the end of the first operational year or as soon as sufficient state or local funds allocated for that purpose become available, whichever is sooner. This repayment is not reflected in cash flow so as to keep the revenue sources and repayment comprehensible for the reader,...". Cash flows must include enough detail to validate data and must reflect all cash transactions in the period they are expected. A loan of \$250,000 is recorded as revenue in the Year 1 cash flow. Under Generally Accepted Accounting Principles, loans and principal payments are not budgeted revenues or expenditures. Revenues and expenditures on the cash flow should reconcile to the budget. The loan should be reported in a separate balance sheet section along with the principal portion of the loan payments. Cash deficits exist in numerous months in Years 2 and 3. The petition does not indicate how these negative balances will be mitigated. Although charter schools were recently granted the ability to issue Tax Revenue Anticipation Notes (TRANS) and may be able to obtain other temporary loans, these can be costly and if not obtained can lead to the insolvency of the charter.

*SCALE* Leadership Academy Charter School does not provide a reasonably comprehensive business plan that adequately addresses the following items:

- A contingency plan if enrollment and/or ADA does not materialize,
- A reasonable description outlining how the enrollment and/or ADA amounts were determined,
- No budget for their school lunch program,
- Facility requirements and associated funding and expense budgets,
- Some understated expenses for technology, unemployment insurance and substitute costs
- The cash flow presented contains projected negative cash balances in year 2 that continue throughout year 3. Additionally, the cash flow does not include sufficient detail to validate its accuracy. The petition fails to adequately address how projected negative cash balances will be mitigated.

### **Facilities**

*SCALE* has underestimated their facility costs. The lease rates quoted are in the range of modified gross leases for industrial space with few existing tenant improvements. (A modified gross lease requires the tenant pay for all utilities with the exception of water and trash.) There are no budget provisions for utilities, telephones, data, and security monitoring which would average approximately \$.50 per square foot per month or \$60,000 per year for a 10,000 square foot building. No funds are budgeted for tenant improvements needed to make the space suitable for a school. At a modest estimate of \$40 per square foot for tenant improvements needed to create a school setting the one-time cost for tenant improvements for a 10,000 square foot building would approximate \$400,000.

### **Governance**

The Petition's narrative for Required Element D is located on pages 78-86. The Charter's Articles of Incorporation, Bylaws, and Conflict of Interest Code are located on pages 161-180.

California Code of Regulations, Title 5, section 11967.5.1(f)(4) requires charter school petitions to include evidence that the governance structure reflects a seriousness of purpose necessary to ensure that: (1) the school will become and remain a viable enterprise; (2) there will be active and effective representation of interested parties, including, but not limited to parent/guardians; and (3) the educational program will be successful.



## **THE PETITION AND BYLAWS LACK EVIDENCE REFLECTING A SERIOUSNESS OF PURPOSE THAT THE SCHOOL WILL BECOME AND REMAIN A VIABLE ENTERPRISE**

### **Organizational Flaws**

Based on the information provided in the petition, none of the founding group members, with the possible exception of the lead petitioner, live or work within the boundaries of Rialto Unified School District. The Petition lacks evidence that the petitioners are connected to the community they seek to serve.

The Petition at page 80 states, "The Board shall have at least five (5) and no more than eleven (11) directors. In accordance with Education Code section 47604(b), the County Board of Education may appoint a representative to sit on the Board of Directors." The Bylaws, Article VII, Section 3, repeats this language. This arrangement is insufficient because it allows for the possibility of an even number of directors and deadlock. Neither the Petition nor the Bylaws require the Board of Directors to maintain an odd number of members.

The Articles of Incorporation, Article V, states: "This corporation shall be a membership corporation, with one class of membership. All members shall be voting members." (p. 161) The Bylaws, Article VI, Section 1, states: "This corporation shall have no voting members within the meaning of the Nonprofit Corporation Law." (p. 164)

The Petition's governance structure fails to contain signed Bylaws. Without signed Bylaws, it is impossible to evaluate if the Petition provides a reasonably comprehensive description of the governance structure.

### **Brown Act**

The Petition at page 3 states: "*SCALE* Leadership Academy will comply with the Brown Act." The Bylaws at Article VII, Sections 14 and 15, also promise to abide by the Brown Act.

Government Code section 54954 requires governing board meetings to occur within the boundaries of the territory over which the entity conducting the meetings exercises jurisdiction. *SCALE* Leadership Academy Bylaws at Article II, section 1, state that the corporation's principal office is in Pasadena. The Bylaws at Article VII, section 14, provides that Board of Directors meetings shall occur at the corporation's principal office. Holding meetings in the City of Pasadena for a school located within the Rialto Unified School District fails to satisfy the requirements of the Brown Act.

The Petition also submits confusing language regarding *SCALE* Leadership Academy's jurisdiction. The Petition at page 2 states that the school will locate within the boundaries of the Rialto Unified School District. The Bylaws at Article VII, section 20, states that a quorum of directors "shall participate in the teleconference meeting from locations within the boundaries of the school district in which the Charter School operates." The Bylaws establish a de facto jurisdiction within the Rialto Unified School District, which conflicts with its mandate to hold Board of Directors meetings in Pasadena.

Government Code section 54954.2(a)(1) states, in part: "The agenda...shall be posted in a location that is freely accessible to members of the public and on the local agency's Internet Web site, if the local agency has one." The nonprofit corporation's Bylaws promise to comply with the Brown Act and the nonprofit corporation is an active, ongoing entity, *SCALE* Leadership Academy's website at <http://www.scaleacademy.org/> contains no Board of Directors meeting agendas.

### **Conflicts of Interest**

The Petition at page 82 states: “The School has adopted a Conflict of Interest Code which complies with the Political Reform Act, Corporations Code Conflicts of Interest rules, and Government Code section 1090 which shall be updated with any charter school specific conflicts of interest laws or regulations.” This quote is footnoted to: “The Charter School has agreed to comply with Government Code section 1090 subject to any clear legal authority indicating that this section of the law is inapplicable to charter schools.” Considering that significant portions of the charter school community contest the applicability of conflicts of interest laws to charter schools, it is imperative that the Petition’s promise to comply with Government Code section 1090 is unequivocal. The Petition’s conditional and vague statement is insufficient.

The Petition and Bylaws also present conflicting and confusing language regarding Government Code section 1090. The Bylaws at Article IX, section 1, state: “The Corporation shall comply with Government Code Section 1090.” The Conflict of Interest Code, section I, states: “As the Charter School has also agreed in its charter to comply with Government Code Section 1090 (“Section 1090”), in addition to the Political Reform Act, this Code also conforms to the requirements of Section 1090.” Neither reference contains conditional language. It is unclear whether *SCALE* Leadership Academy will comply with Government Code section 1090.

The Petition at page 80 contains an organizational chart placing the School Director and Principal on equal hierarchical footing. The Conflict of Interest Code, Exhibit A, lists the School Director, but fails to list the Principal as a “designated employee” required to file a Statement of Economic Interest.

The Conflict of Interest Code, Exhibit A, also names a Business and Operations Manager as a “designated employee” required to file a Statement of Economic Interest. The Petition fails to mention a Business and Operations Manager and lacks a job description for the position.

### **Civil Liability and Indemnity of San Bernardino County Superintendent of Schools and Board of Education**

San Bernardino County Board of Education Rule 609, “Charter Conditions if Approved by County Board of Education,” requires broad indemnification:

“The charter must specify that the charter school shall at its own cost *defend, indemnify and hold harmless the charter authorizing entity, its Governing Board, officers and employees, and the County Superintendent of Schools (commonly referred to as the “County chartering authority”) and his/her officers and employees*, from any claim or demand of whatever nature, brought by any person, institution, or organization and arising in any manner out of the formation, operation and activities or omissions to act of the charter.

“The charter school, at its own cost, expense, and risk, shall agree in the charter and in a signed writing with all appropriate approval formalities observed, to defend any legal proceedings that may be brought against the *County chartering authority, its Governing Board and its officers and employees, and the County Superintendent of Schools and his/her officers and employees*, by any person, including any institution or organization, on any claim or demand of whatever nature arising out of the decisions and steps taken by the County chartering authority and/or its Governing Board to grant or participate in the granting of a charter, and shall satisfy any judgment that may be rendered against any of them. The County chartering authority’s Governing Board and the County Superintendent of Schools shall notify the charter school in writing of the receipt of any such claims or demands, and the charter school shall accept the claim or demand, and defend, indemnify and hold each of them harmless on same.” (Emphasis added.)

The Petition's civil liability and indemnification provisions contain significant inconsistencies and insufficient language. These provisions raise questions about the extent of protection from civil liability the petitioners intend to provide the chartering entity and its employees.

The Petition at page 85 states: "*SCALE* Leadership Academy will hold harmless and indemnify the County Board of Education from every liability, claim, or demand" including: (1) injuries to people or property sustained by *SCALE* Leadership Academy employees, or by any person, firm, or corporation employed directly or indirectly by *SCALE* Leadership Academy; (2) injuries to people or property caused by an act, neglect, default, or omission of *SCALE* Leadership Academy, its officers, employees, or agents; and (3) the furnishing or use of any copyrighted or un-copyrighted composition, or patented or unpatented invention. This language fails to hold harmless and indemnify: (1) the San Bernardino County Board of Education's officers and employees; (2) the San Bernardino County Superintendent of Schools; and (3) San Bernardino County Superintendent's officers and employees.

In contrast to its promise to indemnify the San Bernardino County Board of Education, the Petition at pages 85-86 states it will provide "Comprehensive Bodily Injury and Property Damage Liability for the combined single limit coverage of not less than \$5,000,000 per single occurrence. The County Board of Education will be named as the 'other named *insurers*.'" (Emphasis added.)

The Petition at page 85 states: "In accordance with its corporate bylaws, *SCALE* Leadership Academy, at its own expense and risk, will defend all legal proceedings on any such liability, claim, or demand that may be brought against *SCALE* Leadership Academy and/or the Board of Directors or the School's officers and employees." This language fails to defend: (1) the San Bernardino County Board of Education; (2) the San Bernardino County Board of Education's officers and employees; (3) the San Bernardino County Superintendent of Schools; and (4) San Bernardino County Superintendent's officers and employees.

The Petition at page 85 also states: "*SCALE* Leadership Academy will further indemnify and hold harmless the County Board of Education and the California Department of Education of any present or future liability for the School's actions." This language fails to hold harmless and indemnify: (1) the San Bernardino County Board of Education's officers and employees; (2) the San Bernardino County Superintendent of Schools; and (3) the San Bernardino County Superintendent's officers and employees.

The Petition at page 103 fails to indemnify the San Bernardino County Board of Education's officers and employees, the San Bernardino County Superintendent of Schools, and the San Bernardino County Superintendent's officers and employees regarding contractual liability resulting from third party contracts with its vendors, contractors, partners or sponsors.

#### **THE PETITION AND BYLAWS LACK EVIDENCE REFLECTING A SERIOUSNESS OF PURPOSE THAT ENSURES ACTIVE AND EFFECTIVE PARENTAL REPRESENTATION IN THE GOVERNANCE OF *SCALE* LEADERSHIP ACADEMY**

The Petition at page 14 states: "Parents and families will be expected to be active participants in the education of their student and the school community as a whole. To support this initiative, Parents will be required to serve a mandatory 20 hours of volunteer time per year in support of the school mission." This language relegates parents to passive volunteer positions instead of offering active and effective *representation* in the school's governance. It further creates the potential of disproportionately excluding families from admission and continuing enrollment based on their means or ability to comply with the volunteer requirements.

The Petition and Bylaws fail to ensure active and effective parental representation because. *SCALE* Leadership Academy already chose its initial Board of Directors and no directors are parents. Further, the Bylaws, Article VII, Section 5, states that the Chairman of the Board of Directors will appoint a committee to choose candidates for election to the Board of Directors. It is unclear whether parent/guardians will have the ability to elect directors.

The Petition at page 81 states: “The Board *shall* seek to nominate and appoint members with experience in one or more of the following areas: education, government, law, business, public finance/accounting, fundraising, facilities, philanthropy, or public relations.” (Emphasis added.) Imposing these requirements on Board of Directors candidates inappropriately excludes parents from serving on the Board of Directors based on factors including means and education. This is particularly egregious given *SCALE* Leadership Academy’s repeated statements that its focus is to serve an at-risk community.

The Bylaws, Article VII, Section 3, requires all directors to: (1) have a college degree; (2) have education or nonprofit experience; and (3) have relevant professional experience (i.e. finance, education, law, business, facilities, real estate, or public relations). This language discriminates against parents based on their means and education.

The Petition at page 84 states: “*SCALE* Leadership Academy will establish a Parent/Teacher Council (“PTC”) to facilitate communication among parents, teachers and the Board as well as to promote cultural and social activities within the school community.” Some of the PTC’s duties include reporting to the Board of Directors “as needed” and providing advice to the Board of Directors “as requested by the Board or deemed necessary by the PTC.” This advisory role fails to ensure active and effective *representation*.

*SCALE* Leadership Academy’s Bylaws at Article II, Section 1, states that the corporation’s principal office is in Pasadena. The Bylaws at Article VII, section 14, provides that Board of Directors meetings shall occur at the corporation’s principal office. Holding meetings in the City of Pasadena for a school located within the Rialto Unified School District creates an approximate 100-mile roundtrip to attend Board of Directors meetings. This effectively prevents parents from attending these meetings.

Nothing in the Petition or the Bylaws establishes a mechanism allowing parents to place items on the agenda. Neither the Petition nor the Bylaws guarantee public comment.

### **Dispute Resolution**

The Petition’s narrative regarding Required Element N is found on pages 133-135.

The Petition contains a reasonably comprehensive set of procedures to resolve disputes when the San Bernardino County Superintendent of Schools determines a violation of law or the charter.

The Petition at page 135 fails to contain reasonably comprehensive procedures to resolve disputes raised by *SCALE* Leadership Academy against the San Bernardino County Superintendent of Schools. The Petition states:

“In the event of a dispute raised by the charter school against the County Superintendent over the terms of the charter, the charter school shall put the dispute in writing to the Superintendent or designees, and the County Superintendent, or Designee shall meet with the Principal and President of the Charter School to seek resolution within two weeks of receiving the written complaint. After this meeting if resolution is not reached, both parties are free to pursue any

other legal remedy available. However, mediation may be commenced with the agreement of both the County Superintendent and the Charter School, with the costs of the mediator to be split by both parties.”

This procedure for resolving disputes initiated by the charter school is insufficient, unclear and not calculated to *resolve* disputes. At p. 134, paragraph 5, the petition states, “the parties will proceed to step 3.” However, the petition does not identify a “Step 3.” At page 134, paragraph 6, the petition states “... the parties will proceed to Step 4.” However, the petition fails to identify a “Step 4.”

### **Charter School Closing Procedures**

The Petition’s narrative regarding Required Element P is found on pages 137-139.

While *SCALE* Leadership Academy’s closure procedures attempt to meet the requirements of this element, they fail to comply with California Code of Regulations, Title 5, section 11962(a) because they lack designation of a responsible entity to conduct closure-related activities. The Petition at page 137 states: “Closure of the Charter School will be documented by official action of the Board of Directors....” The official action will also identify an entity and person or persons responsible for closure-related activities.” This language is noncompliant. It promises to designate a responsible entity at the time the charter school decides to close. The law requires that the charter petition designate the responsible entity.

### **Committee Finding**

*SCALE* Leadership Academy **does not** provide a reasonably comprehensive business plan that adequately addresses the timing and amount of revenue apportionments, expenses, cash flow, and accounting procedures.



### **3. REQUIRED SIGNATURES**

Education Code Section 47605(b)(3) “The petition does not contain the number of signatures required by subdivision (a).”

#### **Committee Comments**

Education Code section 47605(a)(1)(A) requires that the Petition be signed by a number of parents or legal guardians of pupils that is equivalent to at least one-half of the number of pupils that the charter school estimates will enroll in the School for its first year of operation. Alternatively, subdivision (a)(1)(B) requires that the Petition be signed by a number of teachers that is equivalent to at least one-half of the number of teachers that the School estimates will be employed at the school during its first year of operation.

Additionally, Education Code section 47605 requires that the Petition shall include “a prominent statement that a signature on the petition means that the parent or legal guardian is meaningfully interested in having his or her child or ward attend the charter school, or in the case of a teacher's signature, means that the teacher is meaningfully interested in teaching at the charter school.

The proposed charter shall be attached to the petition.” On pages 200 and 201 of the *SCALE* petition, the signatures of five teachers are included that certify that they are meaningfully interested in teaching at the *SCALE* Leadership Academy.

#### **Committee Finding**

*SCALE* Leadership Academy **does** provide a sufficient number of signatures of teachers meaningfully interested in teaching at/parents meaningfully interested in having their children attend the charter school.

#### **4. AFFIRMATIONS**

Education Code Section 47605(b)(4) “The petition does not contain an affirmation of each of the conditions described in subdivision (d).”

Education Code Section 47605(d) (1) “In addition to any other requirement imposed under this part, a charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations, shall not charge tuition, and shall not discriminate against any pupil, on the basis of ethnicity, national origin, gender, or disability. Except as provided in paragraph (2), admission to a charter school shall not be determined according to the place of residence of the pupil, or of his or her parent or guardian, within this state, except that any existing public school converting partially or entirely to a charter school under this part shall adopt and maintain a policy giving admission preference to pupils who reside within the former attendance area of that public school.”

Education Code Section 47605(d) (2) (A) “A charter school shall admit all pupils who wish to attend the school.

(B) However, if the number of pupils who wish to attend the charter school exceeds the school’s capacity, attendance, except for existing pupils of the charter school, shall be determined by a public random drawing. Preference shall be extended to pupils currently attending the charter school and pupils who reside in the district except as provided for in Section 47614.5. Other preferences may be permitted by the chartering authority on an individual school basis and only if consistent with the law.

(C) In the event of a drawing, the chartering authority shall make reasonable efforts to accommodate the growth of the charter school and, in no event, shall take any action to impede the charter school from expanding enrollment to meet pupil demand.”

#### **Committee Comments**

Information on the means to achieve a reflective racial and ethnic balance can be found on pages 104-105 of the charter petition. The petition presents an attainable strategy and plan that recognizes the need to enroll and attract students but not a specific means of reflecting an ethnic and racial balance that is present in the proposed locale of the school site.

The petition does not list methods of transporting students to and from the charter school or means available to assist families that desire to attend the charter school but are unable to afford transportation. While not a requirement in charter law, this issue could serve as an obstacle to reaching an ethnic and racial balance goals based upon the desired location of the school and nearby ethnic demographics.

Information relative to this section can be found on pages 106-109 of the petition.

The petition lists applicable admission requirements and included a detailed description of the lottery process for admission for reaching the desired student targeted audience.

Should the San Bernardino County Board of Education approve this charter appeal, *SCALE* will need to clarify its enrollment procedures for special needs students in a memorandum of understanding.

Charter Schools are required to describe their suspension and expulsion procedures. Information relative to this section may be found on pages 113-128 of the petition. The petition somewhat mirrors California Education Code relative to ensuring a student’s due process rights and procedures in the area of

suspension and expulsion.

The petition does not authorize the San Bernardino County Board of Education to hear appeals of student expulsions from *SCALE* charter school nor any other appeals body.

Note: The California Education Code is silent in this matter but is a preference of the County Board of Education to hear expulsion appeals.

### **Committee Finding**

*SCALE* Leadership Academy **does not** provide reasonable assurances to the areas outlined in Education Code Section 47605(d).

## **5. REQUIRED ELEMENTS A-P**

Education Code Section 47605(b)(5) “The petition does not contain reasonably comprehensive descriptions of all of the following: (A-P).”

### **Committee Comments**

There are 16 required elements for a charter to address for this type of petition. Of the 16, the Committee found that Elements A, B, C, D, E, F, G, I, J, K, L, N, P failed to have reasonably comprehensive descriptions. Detailed comments are noted for each element in the pages following the executive summary and introduction.

### **Committee Finding**

*SCALE* Leadership Academy **does not** provide a reasonably comprehensive description for each of the Required Elements A-P.

## **COMMITTEE RECOMMENDATION**

After a comprehensive review of the charter petition and as a result of its findings, the committee recommends that the County Board **deny** the *SCALE* Leadership Academy at its regular meeting on April 1, 2013.

SAN BERNARDINO COUNTY BOARD OF EDUCATION  
MAY 6, 2013 AGENDA ITEM 8.2

RESOLUTION OF THE SAN BERNARDINO COUNTY BOARD OF EDUCATION  
REGARDING THE APPEAL OF  
SCALE LEADERSHIP ACADEMY CHARTER SCHOOL

WHEREAS, pursuant to Education Code § 47605(j)(1) *et seq.*, the San Bernardino County Board of Education ("Board") is authorized to consider appeals arising from the denial of a Charter Petition submitted to a local school district; and

WHEREAS, the review of an appeal shall be governed by the standards and criteria set forth in Education Code § 47605(b); and

WHEREAS Petitioner, SCALE Leadership Academy Charter School ("Petitioner" or "SLA") has submitted four Charter Petitions to the Rialto Unified School District ("RUSD") since August 13, 2010; all four of which have been denied;

WHEREAS, on February 4, 2013 SLA submitted a request to the County Board for review of the decision rendered by RUSD; and

WHEREAS, a public hearing on the SLA Appeal was held on March 4, 2013 to determine the level of support for the SLA Charter Petition in accordance with Education Code § 47605(b); and

WHEREAS, the County Board tasked a Committee of experts in curriculum, business, special education, student welfare, personnel, and governance to review the Appeal to determine whether the SLA Petition and supporting documents were in compliance with the provisions of the Education Code; and

WHEREAS, the Committee prepared a report regarding its review of the SLA Petition, setting forth its evaluation of which required Education Code elements were satisfied and which were not. The Committee's report was submitted to the SLA Charter Petitioners, to the RUSD and to the San Bernardino County Board of Education before the April 1, 2013, meeting. The Committee report on the Appeal was considered by the County Board at its April 1, 2013, meeting; and

WHEREAS, in reviewing the SLA Appeal, the County Board has been cognizant of the intent of the Legislature that charter schools are and should become an integral part of the California educational system and that establishment of charter schools should be encouraged; and

WHEREAS, the County Board has reviewed and analyzed all information received with respect to the SLA Charter Petition, including information related to the operation and potential effects of the proposed charter school.

**NOW, THEREFORE, BE IT RESOLVED AND ORDERED AS FOLLOWS:**

That the San Bernardino County Board of Education, having fully considered and evaluated the Appeal for the establishment of SLA, hereby **denies** the Appeal pursuant to Education Code § 47605(b) because it is not satisfied that the granting of the Charter is consistent with sound educational practice, based on the following factual findings:



**I. The Charter School Presents an Unsound Educational Program for the Pupils to be Enrolled in the Charter School. [Education Code § 47605(b)(1).]**

1. The SLA Petition indicates that a standards based curriculum will be implemented at the proposed charter school. The Petition does not cite the standards based curriculum adopted in August 2010 but instead references standards adopted by the California Department of Education in 2001. The 2010 standards are significantly different. SLA students taught using the 2001 standards will not be prepared to compete with students taught using the 2010 Common Core State Standards ("CCSS"). As SLA's students leave middle school, they will not be prepared to enter comprehensive high school programs taught using the CCSS.
2. The SLA Petition proposes a model for English Language Learner support that includes diagnostic testing, regular assessment, instructional strategies and professional development for teachers that supports a full inclusion model. However, while the Petition includes ELD standards and alludes to ELD supported instruction, the Petition does not identify time during the school day exclusively for English Language Development instruction for ELD students, so that ELD students may derive maximum educational benefit from the remainder of their day.
3. The SLA Petition indicates that SLA will depend on the RUSD for all special education services, including special education assessments. The Petition does not require SLA's administrators and teachers to have a special education credential, but only a working knowledge of special education. The Petition does not describe how SLA will provide a continuum of special education services to meet the needs of mild to severely handicapped students. There is no mention of how SLA will accommodate students that require a special day class setting per IEP requirements or how SLA would serve medically fragile students. The Petition also does not discuss how the proposed charter school will serve students with low incidence needs such as hearing impaired, orthopedically impaired, and/or visually impaired students.

**II. The Petitioners Are Demonstrably Unlikely To Successfully Implement The Program Set Forth In The Petition. [Education Code § 47605(b)(2).]**

1. The SLA Petition included a budget for the first five fiscal years. Based on the budget presented, serious concerns exist about SLA's fiscal solvency and whether Petitioners will successfully implement the program set forth in the Petition.
2. SLA projects enrollment of 125 6th grade students during the first year of operation. The Petition adds 125 students in each of the next two years. The Petition does not contain a sample of interested parents or any other documentation to support projected enrollment of 125 students per year for the first three years. Student enrollment is critical to the fiscal solvency of SLA. If SLA's projected enrollment does not materialize, SLA's ability to maintain a positive cash flow and/or fund balance will be affected.

**III. The SLA Charter Petition Does Not Contain The Required Affirmations Pursuant To Education Code §§ 47605(d)(1) and 47605(b)(4).**

1. The SLA Petition lists general strategies for achieving a racial and ethnic balance that is reflective of the community for initial enrollment. However, the Petition does not propose to transport SLA's students to and from school or identify means available to assist families that desire to attend SLA but are unable to afford transportation. This may affect the demographics, and racial and ethnic balance of SLA due to the location of SLA's potential school site. The Petition also does not indicate methods for transmitting SLA's marketing information and marketing strategies

to the large English Language Learner population within local school district boundaries and surrounding areas.

**IV. The SLA Charter Petition Does Not Contain A Reasonably Comprehensive Description Of The Sixteen Elements Required Pursuant To Education Code § 47605(b)(5).**

**A. Description Of The School's Educational Program**

1. Regarding instructional methods and strategies, SLA will use a standards-based curriculum. The Petition does not cite the standards adopted in August 2010. Rather, the Petition relies upon the standards adopted by the California Department of Education in 2001 (pps. 24-26). The new CCSS standards are dramatically different. Students will not be prepared to compete with others who are using the 2010 CCSS, and as SLA's students leave middle school, they will not be prepared to enter comprehensive high school programs using the 2010 standards.
2. On page 27 of the SLA Petition, Figure 8 shows evidence of emphasizing distinctions between types of knowledge. However, the Petition fails to fully align with the Depth of Knowledge approach that teachers will need to instruct and assess students under the CCSS.
3. The SLA Petition does not provide a reasonably comprehensive description of supplemental instructional materials, or other strategies for identifying appropriate instructional topics and strategies to implement the CCSS.
4. While the SLA Petition includes ELD standards and alludes to ELD supported instruction, the Petition fails to identify time during the school day reserved for directed ELD student instruction only, so that students may take advantage of the remainder of their day with maximum instructional benefit.
5. The SLA Petition depends on the RUSD for all special education services, including special education assessments. SLA's administrators and teachers are not required to hold special education credentials, but only to have a "working knowledge" of special education. There is no mention of a continuum of special education services to be offered at SLA to meet the needs of mild to severely handicapped students. There is no mention of how SLA will accommodate students that require a Special Day Class setting per their IEP's requirements.

**B. Measurable Pupil Outcomes**

1. The SLA Petition does not address the strong new focus in the CCSS on critical reading of expository text and on assessment of students' skills in varied types of expository writing.
2. The SLA Petition fails to incorporate the Common Core State Standards for Mathematics Practice for middle school students, which SLA's students will need to demonstrate when they attend high school.
3. The SLA Petition does not align with the Common Core State Standards for science or history/social science, which require frequent assessments of student's expository reading and writing.
4. The SLA Petition does not specify how other hallmark aspects of SLA's goals will be measured, such as college awareness, a drive to succeed, personal commitment to leadership, motivation to continue as self-driven learners, global awareness, and a sense of human responsibility and ethics. There is no explanation of how SLA will measure student achievement of these goals.

**C. Methods to Assess Pupil Progress Towards Pupil Outcomes**

1. The SLA Petition fails to describe how methods of assessment will mimic the types of questions to be included on the state tests to be implemented in 2013-2014. These are different in question-type from the current California Standard Tests (CSTs).
2. To help students achieve at their current grade level, and then on their high school assessments, SLA must include the types of questions that mirror the teaching strategies which will be used as part of the 2010 Common Core State Standards.

**D. Governance Structure Of The School**

1. Based on the information provided in the Petition, none of SLA's founding group members, with the possible exception of the Lead Petitioner, live or work within the boundaries of the RUSD. The SLA Petitioners have not evidenced strong connection with the community they intend to serve.
2. The SLA Petition lacks evidence reflecting a seriousness of purpose necessary to ensure SLA will become and remain a viable enterprise. Without adopted Bylaws, it is impossible to evaluate if the Petition provides a reasonably comprehensive description of the governance structure.
3. SLA's Bylaws list Pasadena as the location for Board of Directors meetings. The Brown Act requires that meetings occur within the jurisdiction of the school district (RUSD). Government Code section 54954 requires governing board meetings to occur within the boundaries of the territory over which the entity conducting the meeting exercises jurisdiction.
4. Government Code section 54954.2(a)(1) states, in part: "The agenda... shall be posted in a location that is freely accessible to members of the public and on the local agency's Internet Web site, if the local agency has one." SLA's Bylaws promise to comply with the Brown Act and the nonprofit corporation is an active, ongoing entity. However, SLA's Board of Directors does not post agendas on the school's website at <http://www.scaleacademy.org>.
5. The Petition and SLA's Bylaws do not unequivocally promise to comply with Conflict of Interest laws including California Government Code section 1090.
6. The SLA Petition and Bylaws contain insufficient liability and indemnity provisions. The Petition's civil liability and indemnification provisions contain significant inconsistencies and insufficient language. This creates concerns about the extent of protection from civil liability that Petitioners will provide for the chartering entity.
7. The Petition states at page 85: "SCALE Leadership Academy will further indemnify and hold harmless the County Board of Education and the California Department of Education of any present or future liability for the school's actions." SLA's language fails to hold harmless and indemnify: (1) the County Board's officers and employees; (2) the County Superintendent of Schools; and (3) the County Superintendent's employees.
8. The SLA Petition lacks evidence regarding a seriousness of purpose necessary to ensure active and effective parental representation in the governance of SLA.
9. SLA's Bylaws state at Article II, Section 1 that the corporation's principal office is in Pasadena. The Bylaws at Article VII, section 14, provide that Board of Directors meetings shall occur at the

corporation's principal office. Holding meetings in the City of Pasadena for a charter school located in the Rialto Unified School District creates an approximate 100-mile roundtrip to attend Board of Directors meetings. This effectively prevents parents from attending SLA's Board meetings.

#### **E. Employee Qualifications**

1. The SLA Petition contains an insufficient number of teachers who have signed as "meaningfully interested in teaching at SCALE Leadership Academy" to meet SLA's stated goals of serving students in grades 6-8 in all core academic and elective areas of study.
2. The SLA Petition lists only five individuals who have signed as "meaningfully interested" in teaching at SLA, including the Lead Petitioner, Lawrence Wynder. Interested teacher, Theodore Brockman, does not currently have a valid California teaching credential; his preliminary Single Subject Credential in Physical Education expired on July 1, 2012. This credential authorizes instruction in Physical Education exclusively and not in core academic subject areas.
3. The SLA Petition provides incomplete credentialing information for interested SLA teaching staff. No copies of CTC credentials for teachers interested in teaching at SLA were provided. Searching by name only on CTC's website did not produce a credential for one interested teacher, making it impossible to verify qualifications.
4. Newer teaching credentials embed English Language Learner authorization(s) into the credential based on coursework taken through an institution of higher education. The Education Code requires individuals to hold the appropriate authorization prior to providing instructional services, including specified ELL services. (Education Code sections 44001, 44830(a), 44831, and 44253.1.) The Petition does not mention whether SLA will require the ELL authorization if teachers do not have the authorization within the credential.
5. The SLA Petition is unclear as to the type and/or number of teaching credentials or authorizations that may be necessary to teach SLA's specified courses.

#### **F. Health and Safety Procedures**

1. The SLA Petition is unclear as to whether SLA will require Tuberculosis tests for volunteers.
2. The SLA Petition lacks specificity concerning and meeting legal requirements for medical information retained by the school. Student's medical files and their proper storage are not discussed in the Petition. There is no mention of SLA's health and safety procedures meeting the legal requirements of the Health Insurance Portability and Accountability Act (HIPPA).

#### **G. Reflective Racial and Ethnic Balance**

1. The SLA Petition does not list available methods of transporting students to and from school, or the means available to assist families that desire to attend SLA but are unable to afford transportation. This may affect the racial and ethnic balance of SLA depending on the location of SLA's potential school site.
2. The SLA Petition does not identify methods to transmit SLA's marketing information and strategies to the large English Language Learner population that currently exists within the local school district boundaries and surrounding areas.

#### **H. Financial Audits**

1. The SLA Petition references an annual audit on page 111. However, the Petition fails to identify that the independent auditor will follow Generally Accepted Accounting Principles as is required by Education Code 47605.
2. The SLA Petition's Budget assumptions understate SLA's expenses and likely overstate SLA's revenues.
3. The SLA Petition's Budget assumptions do not provide the projected costs of SLA's anticipated borrowing.
4. SLA's school lunch program revenue and expenses are not contained within SLA's budget. The Petition states SLA intends to provide hot lunches every day for its students. The Petition also indicates that food services will be contracted to an outside provider on page 101, but the Budget does not appear to include a proposed allowance for a contracted food service provider.

#### **I. Student Suspensions and Expulsions**

1. The SLA charter petition fails to include recent legislation in the areas of student due process and other means of correction.
2. The SLA Petition does not authorize the County Board of Education to hear appeals of student expulsions from SLA, nor any other appeals body. It is the preference of the County Board of Education to hear charter school expulsion appeals.

#### **J. Retirement Systems**

1. The SLA Petition indicates that retirement reporting will be contracted to a qualified service provider; however, CalSTRS reporting must be performed by the County Office of Education.
2. The SLA Petition does not acknowledge the recent IRS proposal that may disallow certificated staff at charter schools from participating in CalSTRS. The Petition does not address any comparable alternatives to the CalSTRS retirement system for SLA certificated personnel should the IRS proposal become law.
3. The SLA Petition is unclear on retirement coverage for SLA's classified employees. Although the Petition mentions "PERS, PARS, and Medicare or Social Security, as appropriate", the Petitioners do not appear to understand the mandatory nature of Social Security as it relates to CalPERS. The Petition does not budget sufficient funds to cover both CalPERS and Social Security.

#### **K. Attendance Alternatives**

1. The SLA Petition fails to notify parents of other attendance alternatives other than the right of admission to public school.
2. The SLA Petition does not offer solutions or procedures for SLA students who exhibit poor attendance or other problems related to school attendance.
3. The SLA Petition fails to address matriculation procedures and assistance for students returning to their district of residence in accordance with legislation effective January 1, 2006.



**L. Dispute Resolution**

1. The SLA Petition's dispute resolution procedures for disputes raised by SLA against the County Superintendent of Schools are insufficient, unclear, and not reasonably calculated to resolve disputes.

**M. Charter School Closing Procedures**

1. The SLA's closure procedures fail to comply with California Code of Regulations, title 5, section 11962(a) because they lack designation of a responsible entity to conduct closure-related activities. The SLA Petition promises to designate a responsible entity at the time SLA closes.

**THEREFORE, THE BOARD FINDS:**

- i. The SCALE Leadership Academy charter petition presents an unsound educational program for the pupils to be enrolled in the charter school.
- ii. The SCALE Leadership Academy charter Petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.
- iii. The SCALE Leadership Academy charter petition fails to meet the signature requirements under Education Code section 47605(a).
- iv. The SCALE Leadership Academy charter petition fails to provide the required assurances under Education Code section 47605(b)(4) and 47605(d)(1).
- v. The SCALE Leadership Academy charter petition does not provide a reasonably comprehensive description of all 16 elements required by Education Code section 47605(a)(5)(A).

The terms of this Resolution are severable. Should it be determined that one or more of the findings is invalid, the remaining findings and the denial of the SCALE Appeal shall remain in full force and effect. In this regard, such finding, in and of itself, is a sufficient basis for denial.

The foregoing Resolution was considered, passed, and adopted by this Board by a vote of three in favor and one opposed at its regular meeting of May 6, 2013.

The foregoing resolution was considered, passed, and adopted by this Board at its regular meeting of May 6, 2013.

AYES IN FAVOR OF SAID RESOLUTION:

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NOES AGAINST SAID RESOLUTION:

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Dated: \_\_\_\_\_

By: \_\_\_\_\_

President, Governing Board

San Bernardino County Board of Education



LAW OFFICES OF YOUNG, MINNEY & CORR, LLP  
SACRAMENTO • LOS ANGELES • SAN DIEGO

MARCH 29, 2013

Via Electronic Mail

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REPLY TO SACRAMENTO OFFICE

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Trustees of the Board of Education  
San Bernardino County Office of Education  
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**Re: Response to San Bernardino County Office of Education Staff Report  
and Findings of Fact for Denial of the SCALE Charter Petition**

Dear Board President Harrison and Trustees:

Our office serves as legal counsel for Schools & Communities for Advanced Learning Experiences ("SCALE" or the "Charter School") in its charter petition appeal to the San Bernardino County Board of Education ("County Board"). We are in receipt of the San Bernardino County Office of Education's ("County" or "County staff") Findings and Recommendations ("report") on the SCALE charter. The purpose of this letter is to respond to the County staff's report and findings of fact for denial of the charter petition, and to demonstrate that the report does not constitute sufficient legal grounds to deny the SCALE charter.

At the outset, we point out that the Education Code provides specific guidance to governing boards to approve the establishment of charter schools. Education Code Section 47605(b) states:

In reviewing petitions for the establishment of charter schools ... the chartering authority shall be guided by the intent of the Legislature that charter schools are and should become an integral part of the California educational system and that establishment of charter schools should be encouraged. (Emphasis added.)

Education Code Section 47605(b) also provides the legal basis for the denial of a charter petition as follows:

The governing board of the school district shall grant a charter for the operation of a school under this part if it is

*Bette Harrison, President*

*Trustees of the Board of Education*

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satisfied that granting the charter is consistent with sound educational practice. The governing board of the school district shall not deny a petition for the establishment of a charter school unless it makes written factual findings, specific to the particular petition, setting forth specific facts to support one or more of the following findings:

- (1) The charter school presents an unsound educational program for the pupils to be enrolled in the charter school.
- (2) The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.
- (3) The petition does not contain the number of signatures required by subdivision (a) [of Education Code Section 47605].
- (4) The petition does not contain an affirmation of each of the conditions described in subdivision (d) [of Education Code Section 47605].
- (5) The petition does not contain reasonably comprehensive descriptions of [the 16 required elements]. (Emphasis added.)

Accordingly, the law is written such that the default position is for a county board of education to approve a charter petition, unless it makes written factual findings to support a denial.

The County staff's Report, which could form the basis for findings for denial of the charter petition by the County Board, contains findings that do not meet the legal standard for denial of a charter petition. Many of the findings concern resolvable matters that the County could have more appropriately dealt with through minimal communication with the Charter School, in a memorandum of understanding with SCALE, or imposed conditions on the Charter School's opening and operation. Moreover, the findings are based on incorrect facts, conjecture, or go beyond the requirements set forth in law, and therefore the findings constitute an impermissible basis for denial of the SCALE charter.

Further, we also wish to point out that in its report, County staff added a sixth option for denial of the SCALE charter petition, is the petition inconsistent with state law. In answering this question, County staff made clear its opinion that the SCALE charter is not inconsistent with state law. Specifically, the County staff wrote: "The petition has complied with the requirements of state law as it relates to charter school petitions." **Therefore, by the County staff's own determination, the SCALE charter complies with all legal requirements, and thus there is no legal basis upon which the County Board may deny the SCALE charter petition appeal.**

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Given this finding by County staff, the Charter School has demonstrated that its charter is legally compliant and there is no lawful reason for which the County Board may deny the charter petition. However, in the interest of maintaining an open dialog, the Charter School wishes to address the County staff's findings. Below, please find the summary of the "not sufficient" findings from the County staff report, in the order in which they were presented, immediately followed by the Charter School's response. The SCALE responses were drafted both by the petitioners and by our office.

Element A, Educational Program

**Finding:** In regards to specific instructional methods and strategies, the petitioner indicates that SCALE will use a standards-based curriculum. It does not cite the standards adopted in August 2010. Rather, it relies upon the standards adopted by the California Department of Education in 2001 (pps. 24-26). The new standards are dramatically different. Students will not be prepared to compete with others who are using the 2010 Common Core State Standards (CCSS), and as they leave middle school, will not be prepared to enter comprehensive high school programs using current standards.

**SCALE Response:** This finding appears to demonstrate County staff's concern that the Charter School will not utilize the Common Core State Standards. Both the District and the California Department of Education understand that SCALE *will* implement the CCSS, and therefore did not raise this concern previously. SCALE hereby affirms that SCALE Leadership Academy will teach the Common Core State Standards adopted in 2010. Accordingly, this finding lacks a factual basis and is an impermissible basis upon which to deny the charter petition.

**Finding:** In addition, on page 27, Figure 8, shows evidence of the petitioner emphasizing distinctions between types of knowledge. Unfortunately, this only partially aligns to the Depth of Knowledge approach that teachers will need to instruct and assess students the CCSS.

**SCALE Response:** The County here is merely expressing its opinion, which amounts only to a pedagogical difference of opinion with SCALE. The County's opinion is speculative in nature and does not amount to a finding of fact. Accordingly, this finding lacks a factual basis and is an impermissible basis upon which to deny the charter petition.

**Finding:** Supplemental Materials must be identified, or other strategies for identifying appropriate instructional topics and strategies would need to be used to provide adequate instruction in relation to the CCSS.

**SCALE Response:** SCALE has committed to implementation of Common Core State Standards. The Charter School is not required to list every possible item that would be involved in such implementation; this goes beyond any rational definition of "reasonably comprehensive." Accordingly, this finding lacks a legitimate factual basis and is an impermissible basis upon which to deny the charter petition.



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**Finding:** While the petition includes ELD standards and alludes to ELD supported instruction, there must be required time only for directed English Language Development for students, during the school day, so that students may take advantage of the remainder of their day with maximum benefit.

**SCALE Response:** There is no legal requirement for the County staff's assertion here, and it is not supported by any facts or research. Accordingly, this amounts to a difference of pedagogical opinion, or a misreading of the language of the charter, neither of which is a permissible basis for denial of the charter petition.

**Finding:** The Charter is depending on the District for all special education services, including special education assessments. Charter administrators / teachers are not required to have a special education credential, only a "working knowledge" of special education. There is no mention of a 'continuum of special education services to meet the needs of mild to severe handicapping conditions. There is no mention of how they will accommodate students that require a Special Day Class setting per IEP requirement.

**SCALE Response:** The charter language in this section meets all applicable legal requirements, and SCALE exercised the default option under Education Code Section 47641(b), which is to be deemed a public school of the school district for purposes of special education. Under this arrangement, all special education staff would be employees of the school district, the school district would be responsible for proper qualifications and credentials, and the school district would be responsible for meeting all needs of special education students. The language of this section meets legal requirements for a charter petition submitted to a school district. Accordingly, this finding lacks a legal basis and is an impermissible basis upon which to deny the charter petition.

#### Element B, Measurable Pupil Outcomes

**Finding:** There is no discussion of the strong new focus on expository text for reading critically or for assessing skills in varied types of expository writing.

**SCALE Response:** The County staff here is expressing an opinion, unsupported by facts or research, which amounts to speculation. The Charter School will take this recommendation under consideration. Accordingly, this finding lacks a factual basis and is an impermissible basis upon which to deny the charter petition.

**Finding:** In regards to mathematics for these middle school students, the CCSS Standards for Mathematical Practice, which students will be starting to emphasize in elementary school and will need to demonstrate in their high school years, should be a primary aspect of what is assessed.

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**SCALE Response:** The County staff here is expressing an opinion, unsupported by facts or research, which amounts to speculation. The Charter School will take this recommendation under consideration. Accordingly, this finding lacks a factual basis and is an impermissible basis upon which to deny the charter petition.

**Finding:** To align with the Common Core State Standards, both science and history/social science should indicate that students will be participating, as a substantial part of the program, in reading expository text, and in to carry out expository writing and there should be assessments to indicate progress in these areas.

**SCALE Response:** The County staff here is expressing an opinion, unsupported by facts or research, which amounts to speculation. The Charter School will take this recommendation under consideration. Accordingly, this finding lacks a factual basis and is an impermissible basis upon which to deny the charter petition.

Element C, Methods to Assess Pupil Progress

**Finding:** Methods of assessment, even those which are interim, or even formative, are not described as mimicking the types of questions that will be on the state tests to be implemented in 2013-2014 which are so different in question-type than the current California Standard Tests (CSTs).

**SCALE Response:** The County staff here is expressing a conclusion only, unsupported by facts or research. The Charter School will take this conclusion under consideration. As the County staff knows, the Smarter Balanced Assessments have not been designed yet, so the charter petition cannot thoroughly address them. Accordingly, this finding lacks a factual basis and is an impermissible basis upon which to deny the charter petition.

**Finding:** To help students at their current school level, and then on their high school assessments, they need to have the types of questions that mirror the teaching strategies that will be used on the 2010 Common Core State Standards (CCSS).

**SCALE Response:** The County staff here is expressing an opinion, unsupported by facts or research, which amounts to speculation. The Charter School will take this recommendation under consideration. Accordingly, this finding lacks a factual basis and is an impermissible basis upon which to deny the charter petition.

**Finding:** Special needs students will be graded based on any recommendations within their Individualized Education Plans.

**SCALE Response:** The County staff here is expressing a conclusion only, which merits no response. Accordingly, this finding lacks a factual basis and is an impermissible basis upon which to deny the charter petition.

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Element D, Governance Structure

**Finding:** The petitioners do not appear to have a connection with the community they intend to serve.

**SCALE Response:** The County staff here is expressing an opinion, unsupported by facts or research, which amounts to speculation. SCALE has demonstrated repeatedly its support within the Rialto community. Accordingly, this finding lacks a factual basis and is an impermissible basis upon which to deny the charter petition.

**Finding:** The Petition lacks evidence reflecting a seriousness of purpose necessary to ensure the school will become and remain a viable enterprise based on contradictory and confusing statements in the Petition and Bylaws.

**SCALE Response:** There is no legal requirement for the governing board of a charter school to have an odd number of directors, and the County staff was unable to cite to such a requirement. Certainly, SCALE will endeavor to have an odd number of directors on its Board at all times. Accordingly, this finding lacks a legal basis and is an impermissible basis upon which to deny the charter petition.

**Finding:** The Petition lacks evidence reflecting a seriousness of purpose necessary to ensure the school will become and remain a viable enterprise because the petitioners submitted unsigned Bylaws.

**SCALE Response:** There is no legal requirement for the bylaws of a proposed charter school Board to be signed, and the County staff was unable to cite to such a requirement. Certainly, once the charter is approved, SCALE will complete all corporate formalities. Accordingly, this finding lacks a legal basis and is an impermissible basis upon which to deny the charter petition.

**Finding:** SCALE Leadership Academy Bylaws list Pasadena as the location for Board of Director meetings, which is contrary to the Brown Act requirement that meetings occur within the jurisdiction of the school district (Rialto Unified School District).

**SCALE Response:** The County staff here presents an inaccurate reading of the law. The Brown Act requires a public entity to hold its meetings within *its* jurisdiction. Because Charter schools must admit all students who wish to attend who are California residents, the jurisdiction of SCALE is the entire state of California, including Pasadena. However, SCALE intends to hold its Board meetings at the Charter School site. Accordingly, this finding lacks a legal basis and is an impermissible basis upon which to deny the charter petition.

**Finding:** SCALE Leadership Academy's Board of Directors do not post agendas on the school's website at <http://www.scaleacademy.org>.

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**SCALE Response:** SCALE does not yet have an approved charter, which means that it has not yet received any public funds, which means that it does not currently have to comply with the Brown Act. However, the Charter School is eager to comply with public meeting laws, including posting agendas on its website, and it will implement this practice. Accordingly, this finding lacks a legal basis and is an impermissible basis upon which to deny the charter petition.

**Finding:** The Petition and Bylaws contain contradictory, confusing, and insufficient conflict of interest compliance.

**SCALE Response:** The County staff here is expressing a conclusion only, based upon its own recognition of the conflict among charter school practitioners and authorizers over the applicability of Government Code Section 1090. The SCALE charter simply states that the Charter School will comply with this Section unless it is deemed inapplicable to charter schools. Accordingly, this finding lacks a legal basis and is an impermissible basis upon which to deny the charter petition.

**Finding:** The Petition and Bylaws contain confusing and insufficient liability and indemnity provisions.

**SCALE Response:** SCALE is willing to indemnify the County Board in the manner the County Board deems acceptable. Accordingly, this finding lacks a factual basis and is an impermissible basis upon which to deny the charter petition.

**Finding:** The Petition lacks evidence reflecting a seriousness of purpose necessary to ensure active and effective parental representation in the governance of SCALE Leadership Academy.

**SCALE Response:** The County staff here is expressing its opinion that the only way to ensure parent involvement is to have parents on the Charter School's Board. First, the County staff has mischaracterized the applicable legal requirement here, which states only "...the process to be followed by the school to ensure parental involvement." Education Code Section 47605(b)(5)(D). There is no legal requirement to "ensure active and effective parental representation in the governance of SCALE." Second, the Charter School is eager for parents to be involved actively in the operation of the Charter School. Accordingly, this finding lacks a legal and factual basis and is an impermissible basis upon which to deny the charter petition.

#### Element E, Employee Qualifications

**Finding:** There are an insufficient number of teachers who have signed as "meaningfully interested in teaching at SCALE Leadership Academy" to meet its stated goals of serving students in grades 6-8 in all core academic and elective areas of study.

**SCALE Response:** SCALE believes that the individuals who signed in support of the charter

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petition are, indeed, meaningfully interested in teaching at the Charter School. The County staff has supplied a definition of the term “meaningfully interested,” i.e. that a signer must be able to teach, as of the date of signing, in the Charter School, which the law does not include. Further, SCALE would have been glad to provide additional documentation of the individuals’ credentials, had the County staff simply asked. Accordingly, this finding lacks a legal basis and is an impermissible basis upon which to deny the charter petition.

**Finding:** Incomplete credentialing information was provided for interested SCALE teaching staff. No copies of Commission on Teacher Credentialing (CTC) credentials were provided. Searching by name only on CTC’s website did not produce a credential for one interested teacher, making it impossible to verify qualifications. One teacher’s preliminary credential has expired.

**SCALE Response:** SCALE believes that the individuals who signed in support of the charter petition are, indeed, meaningfully interested in teaching at the Charter School. The County staff has supplied a definition of the term “meaningfully interested,” i.e. that a signer must be able to teach, as of the date of signing, in the Charter School, which the law does not include. The law also does not require that a charter petitioner submit teaching credentials with a charter. Further, SCALE would have been glad to provide additional documentation of the individuals’ credentials, had the County staff simply asked. Accordingly, this finding lacks a legal basis and is an impermissible basis upon which to deny the charter petition.

**Finding:** Authorizations-English Language Learner authorization is not indicated as a requirement in this section.

**SCALE Response:** The Charter School has affirmed in its petition that it will meet all legal requirements for credentials, which includes authorization to teach English Learners. Accordingly, this finding lacks a factual basis and is an impermissible basis upon which to deny the charter petition.

**Finding:** Teaching Credentials- It is unclear as to the type and or number of teaching credentials or authorizations may be needed to teach the courses specified.

**SCALE Response:** The Charter School would have been glad to respond to any questions from County staff on this matter, but none were asked. Accordingly, this finding lacks a factual basis and is an impermissible basis upon which to deny the charter petition.

#### Element F, Health and Safety Procedures

**Finding:** Tuberculosis Tests. There is lack of clarity of required TB tests for volunteers

**SCALE Response:** The County staff here is expressing a conclusion only, which is not supported by law. There is no legal requirement that all volunteers in charter schools must



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submit to TB test. Accordingly, this finding lacks a legal basis and is an impermissible basis upon which to deny the charter petition.

**Finding:** Medical Records. There is a lack of specificity on maintaining and meeting legal requirements for medical information.

**SCALE Response:** The SCALE charter affirms that the Charter School will comply with all applicable federal laws; this necessarily would include HIPPA. There is no legal requirement that a charter petition must include an exhaustive discussion of every law that might apply to it. Accordingly, this finding lacks a legal basis and is an impermissible basis upon which to deny the charter petition.

#### Element G, Racial and Ethnic Balance

**Finding:** The petition does not list methods of transporting students to and from school or means available to assist families that desire to attend the charter but are unable to afford transportation which may affect the demographics/racial and ethnic balance of the school due to the location of the potential school site.

**SCALE Response:** The County staff here is expressing a conclusion only, which is not supported by law. As the County staff well knows, there is no legal requirement that a charter school provide transportation to and from school, except in the case of a student with disabilities whose IEP so requires. Accordingly, this finding lacks a legal basis and is an impermissible basis upon which to deny the charter petition.

**Finding:** Methods are not indicated to transmit the marketing information/strategies to the large English Language Learner population that currently exists in the local school district boundaries and surrounding boundaries as well.

**SCALE Response:** The Charter School has affirmed that it will strive to have its student population reflect the *racial and ethnic* balance of the general population of the school district. This is all that is required by law. The Charter School has also affirmed that it will target its recruiting to achieve such a balance; this would include marketing strategies to the English Learner population. Accordingly, this finding lacks a factual basis and is an impermissible basis upon which to deny the charter petition.

#### Element H, Admissions Requirements

**Finding:** Enrollment procedures for special needs or second language learners are not mentioned in the petition.

**SCALE Response:** The County staff here is expressing a conclusion only, which is not supported by law. As the County staff well knows, there is no legal requirement that a charter

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school describe special enrollment procedures for any group of students in its charter petition. Accordingly, this finding lacks a legal basis and is an impermissible basis upon which to deny the charter petition.

#### Element I, Financial Audits

**Finding:** The application submitted by SCALE references an annual audit on page 111 of the petition; however, the petition is limited to identifying that an independent auditor will be selected through a request for proposal format, will have a CPA and experience working with educational institutions and will be approved by the State Controller on its published list as an education audit provider.

**SCALE Response:** The County staff here is expressing a conclusion only, which is not supported by any sort of factual analysis. There is nothing in this finding for SCALE to respond to. Accordingly, this finding lacks a factual basis and is an impermissible basis upon which to deny the charter petition.

**Finding:** The petition fails to identify that the independent auditor will employ generally accepted accounting principles.

**SCALE Response:** The County staff here is expressing a conclusion only, which is not supported by law. There is no legal requirement that a charter petition to identify that its independent financial auditor will employ generally accepted accounting principles. Accordingly, this finding lacks a legal basis and is an impermissible basis upon which to deny the charter petition.

**Finding:** Budget assumptions understate expenses and likely overstate revenues.

**SCALE Response:** The SCALE charter presents budget assumptions that are both accurate and realistic. The County staff bases its finding on the assumption that the Charter School's goal of enrolling 125 students is unlikely to be met. This finding is based on speculation and has no factual basis. Furthermore, the County speculates that Title I funding may be cut, although there is no evidence that this reduction is currently in affect or even clear confirmation that a cut will occur in the future. Furthermore, the County completely disregards written evidence provided in the budget. The budget clearly states on p. 189 that it includes the SB740 reimbursement program. Therefore, this particular concern regarding facility revenues is resolved, as Proposition 39 Facilities cannot be sought at this time. SCALE cannot apply for Proposition 39 facilities for the 2013-14 school year because the deadline has passed. The County report also questions technology expenses, unemployment, and substitute costs. These reasonably established expenses are in fact realistic and do not provide any evidence as to how they, and even if slightly off by a hair, provide evidence that the school provides an unsound fiscal model. Therefore, this shall not serve as a permissible basis for denial as the budget is based on the best data available at the time, and meets the reasonably comprehensive standard.

*Bette Harrison, President*

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**Finding:** Budget assumptions do not provide sufficient detail of the likely costs of anticipated borrowing.

**SCALE Response:** The budget provides sufficient information in Table I “Repayments” and Cash Flow years 2 and 3. This information is sufficient and the County report provides no written evidence as to how the SCALE budget presents an unsound model. Therefore, this is an impermissible basis for denial.

**Finding:** The school lunch program is not budgeted.

**SCALE Response:** The County is correct in its statement that the SCALE budget does not include revenue or expenses for the Nutrition Program. This is the case because the program will be contracted out to a Nutrition Program Administrator such as Revolution Foods or Royal Dining and all revenues acquired through the program will be paid directly to the organization that administers this program; SCALE does not anticipate that any of its revenue will be utilized for School Nutrition. The County made the statement that it is possible that Federal Nutrition Funding will support 100% of the expenditures of the lunch program. This assumption is correct and provides SCALE’s reasoning for budgeting these factors. In fact, the County states in its report that the Nutrition Program needs to be budgeted. This finding does not present any evidence that the budget provided by SCALE is unsound, but is rather a request for providing more information. Again, this finding that is an impermissible basis for denial. However, SCALE is willing to provide this information upon approval.

#### Element J, Suspension and Expulsion Procedures

**Finding:** *SCALE Academy* is not fully compliant with California Education Code 49079.

**SCALE Response:** The County staff here is expressing a conclusion only, which is not supported by law. Education Code Section 47610 exempts charter schools from Education Code Section 49079. Accordingly, this finding lacks a legal basis and is an impermissible basis upon which to deny the charter petition.

#### Element K, Retirement Systems

**Finding:** The charter school petition indicates that retirement reporting will be contracted out to a qualified service provider; however, CalSTRS reporting must be performed by the County Office of Education.

**SCALE Response:** The Charter School does not disagree with the County staff’s conclusion here. The charter states that SCALE will contract with a qualified service provider; the County is the qualified service provider; therefore, the Charter School will contract with the County for STRS reporting. The logic is plain. Accordingly, this finding lacks a factual basis and is an

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impermissible basis upon which to deny the charter petition.

**Finding:** In addition, the petition does not acknowledge the recent IRS proposal that may disallow certificated staff at charter schools from participating in CalSTRS. It does not address any comparable alternatives to the CalSTRS retirement system should the proposal come to fruition.

**SCALE Response:** The County staff here is highlighting a *proposal*, speculative by design, which has not come to pass. It is an absurd result to require charter petitions to dream up and address any possible occurrence that may come to pass during any given five-year period. Accordingly, this finding lacks a legal and factual basis and is an impermissible basis upon which to deny the charter petition.

**Finding:** The charter school petition is not clear on retirement coverage for classified employees. Although the petition mentions “PERS, PARS and Medicare or Social Security, as appropriate”, it is clear that the petitioners do not understand the mandatory nature of Social Security as it relates to CalPERS, nor does it appear they have budgeted sufficient funds to cover both CalPERS and Social Security.

**SCALE Response:** Non-certificated SCALE employees will participate, at a minimum, in federal Social Security. Accordingly, this finding lacks a factual basis and is an impermissible basis upon which to deny the charter petition.

#### Element L, Public School Attendance Alternatives

**Finding:** The petition fails to notify parents of other alternatives other than the right of admission to public school.

**SCALE Response:** The County here misunderstands the plain language of the applicable law. The law states: “[describe] [t]he public school attendance alternatives for pupils residing within the school district who choose not to attend charter schools.” Education Code Section 47605(b)(5)(L), emphasis added. There is no legal requirement to notify families of alternatives to the right to attend public schools. Accordingly, this finding lacks a legal basis and is an impermissible basis upon which to deny the charter petition.

**Finding:** The petition does not offer solutions or procedures for students who exhibit poor attendance or other problems related to school attendance.

**SCALE Response:** The County here is demonstrating its opinion, not supported by any legal citation, that a charter petition must contain this information. As above, the applicable governing law is very minimal and does not require charter petitions to discuss hypothetical attendance issues for its potential students. Accordingly, this finding lacks a legal basis and is an impermissible basis upon which to deny the charter petition.

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**Finding:** Matriculation procedures and assistance to return to the district of residence are not addressed in the petition in accordance with legislation effective January 1, 2006.

**SCALE Response:** The County here is presenting a vague legal reference, absent any actual citation, that a charter petition must contain this information. SCALE knows of no such legal requirement. As above, the applicable governing law is very minimal and does not require charter petitions to discuss hypothetical matriculation issues for its potential students. Accordingly, this finding lacks a legal basis and is an impermissible basis upon which to deny the charter petition.

#### Element N, Dispute Resolution

**Finding:** The procedures for disputes raised by SCALE Leadership Academy with the San Bernardino County Board of Education are insufficient, unclear and not reasonably calculated to resolve disputes.

**SCALE Response:** A dispute resolution procedure among parties to a contract is necessarily a two-way street. SCALE offered one option. The Charter School would have been glad to address any concerns with its proposed structure that County staff may have, but heard nothing from County staff during the review process. Accordingly, this finding lacks a factual basis and is an impermissible basis upon which to deny the charter petition.

#### Element P, Closure Procedures

**Finding:** The Petition fails to designate a responsible entity to conduct closure-related activities.

**SCALE Response:** There is no legal requirement to name a person or entity to conduct closure-related activities. The SCALE charter specifies that the Board will designate this person or entity when it takes action to close the Charter School. This language has been approved in countless charter petitions authorized around the state and by the State Board of Education. If the County staff wants the charter to be explicit in this regard, the Charter School would agree to a technical amendment of its charter to do so. Accordingly, this finding lacks a factual basis and is an impermissible basis upon which to deny the charter petition.

\* \* \*

#### **Conclusion**

As demonstrated herein, the SCALE Leadership Academy charter petitions meets or exceeds the legal requirements for approval, and the County staff's report presents findings which are impermissible bases for denial of the charter petition appeal. We urge the County Board to consider the Legislative intent behind the Charter Schools Act, that "charters schools





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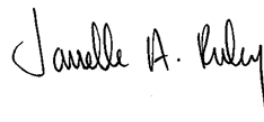
**are and should become an integral part** of the California educational system and that **establishment of charter schools shall be encouraged.**" (Education Code Section 47605(b), emphasis added.)

The conclusions of the County's report are inaccurate. The SCALE charter does provide a sound educational program. The petitioners are demonstrably likely to successfully implement the program set forth in the petition. The charter petition does include all required affirmations. We note that County staff incorrectly applied this standard and made an argument, instead, about racial and ethnic balance. The charter clearly includes all legally required affirmations, which the County staff did not dispute. Finally, the SCALE charter does include a reasonably comprehensive description of the 16 required elements, as we have discussed above.

We, and the petitioners for SCALE Leadership Academy, find the County staff's report to contain issues that are easy resolvable with technical amendments to the charter and/or a memorandum of understanding between the parties. The Charter School has proven itself to be extraordinary committed to the education of students in Rialto and seeks the County Board's approval to begin serving these students. Should you have any questions about the contents of the letter, please do not hesitate to contact me or the Lead Petition, Lawrence Wynder ([lw Wynderi@gmail.com](mailto:lw Wynderi@gmail.com); 626-241-3057) at any time.

Sincerely,  
LAW OFFICES OF

RR, LLP



Cc: Lawrence Wynder, Lead Petitioner  
Linda Fabré, San Bernardino County Office of Education